Public Sphere and Civil Society?
Tranformations of the European Union

John Erik Fossum,
Philip Schlesinger and
Geir Ove Kværk (eds)

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Demonstration by European Federalists in favour of the European Union.
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Preface

The present report is produced under the framework of the CIDEL project, under work package 2 "Europe's Common Interest and Communicative Space".

CIDEL – Citizenship and Democratic Legitimacy in the EU – was a 3-years (2002-2005) joint research project with ten partners in six European countries.

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Erik Oddvar Eriksen
Scientific Responsible
CIDEL project

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Introduction

John Erik Fossum, Philip Schlesinger and Geir Ove Kværk[1]
ARENA – University of Oslo and University of Glasgow

This report derives from the research carried out under work package 2 (Europe's Common Interest and Communicative Space) of the research project CIDEL – Citizenship and Democratic Legitimacy in the European Union (2002-2005), which was made up of ten partner institutions from six European countries. CIDEL was a multi-disciplinary project (initially with 20 researchers) in the fields of political theory, law, political science, media research, and sociology. It branched out to include further researchers under the seven different work packages. The project was financed by the European Commission's Fifth Framework Programme for Research, Key Action "Improving the Socio-economic Knowledge Base".

Towards a Citizens' Europe?

The main purpose of CIDEL was to examine the prospects for a *citizens' Europe* through analysing what *kind of order* is emerging in Europe. A key question was to examine whether the EU is best understood as a mere *problem-solving entity* based on economic citizenship; whether it is moving towards a *value-based community* premised on social and cultural citizenship, or whether it is moving towards a *rights-based post-national union*, based on a full-fledged political citizenship. Work package 2 contained two sub-projects

[1] Philip Schlesinger (p.schlesinger@ccpr.arts.gla.ac.uk), University of Glasgow. John Erik Fossum (j.e.fossum@arena.uio.no) and Geir Ove Kværk (g.o.kvark@arena.uio.no), ARENA – Centre for European Studies, University of Oslo.

which were focused on the prospects for a viable European public sphere (or spheres) and the nature and character of European civil society respectively. CIDEL formulated a theoretical framework such designed as to address the question of the prospects for a citizens' Europe. It did so, cognizant of the fact that there are different conceptions of the EU, among decision-makers, analysts, and the general public. Hence, to prevent foreclosing core ways of framing the EU, CIDEL developed three different conceptions of the EU *qua polity*, and from each of these it derived a set of specific polity prescriptions, institutional arrangements and a concomitant conception of public sphere within the EU. Before presenting these in more detail, we will first spell out WP 2's two sub-projects.

WP 2's first subproject focused on the question of a citizens' Europe with particular emphasis on the notion of a European public sphere. It took as its point of departure that the EU's development as a new kind of polity has been closely connected with its development as a communicative space. Traditionally, political theory and media theory have thought of communicative space and public spheres in terms of what goes on inside nation-states. But this kind of perspective is rapidly ceasing to be adequate, as the EU manifests more and more of the characteristics of a supranational polity. The main questions asked were:

- What are the prospects for a European public sphere?
- Is a uniform public sphere needed, or are overlapping public spheres a more viable option?
- What do our findings tell us about the EU as a polity?

Most of the chapters of this report touch on these questions, and notably so the first three chapters. This report supplements the investigation of the public sphere conducted in Fossum and Schlesinger's (2007) edited volume, which covers conceptual, theoretical and empirical analyses of the concept of a European sphere. That work systematically assesses the development of a European public sphere in relation to CIDEL models I and III, and does so with attention to different public sphere configurations, notable among which are *general-particular* and *strong-weak* publics. These two dimensions, which are developed versions of Nancy Fraser's (1992) distinction between strong and general publics, help situate the question of a European public sphere within a territorial and institutional space. Within the rubric of *general* public the book contains analyses of media, the challenges of language and different language regimes, the role and salience of religion in the Union, and EU constitution making. Within the category of *strong* public, the book assesses

the public-sphere-generating effects of the core EU institutions (European Parliament, Commission and Council).

Work package 2's second sub-project was set up to take stock of the status of the EU as a rights-based post-national union, through the examination of the conditions for, as well as actual patterns of, social movement activism. This project was closely linked to work package 3 on constitutionalisation, and focused on central requirements pertaining to the emergence of rights, which rights, whose rights and how extensive such are (Eriksen et al. 2003). Further, and of particular interest was whether a more rights-oriented EU would lead to social mobilisation. This was studied in relation to the two Conventions (see Kværk's and Longman's chapters in this report).

To illustrate how CIDEL linked different conceptions of the public sphere with different conceptions of the EU as polity, we will briefly outline the three CIDEL models applied to public sphere.

According to the notion of the EU as a *problem-solving entity*, what is the underlying conception of public sphere? In institutional terms, this model depicts the EU as a trans-national entity with a criss-crossing network of related *issue-oriented* − and confined − *epistemic* communities. These are involved in practical problem-solving and do not amount to an overarching European public in democratic terms. They are hardly pan-European. They are also narrowly confined issue communities rather than comprehensive publics. On both counts they do not qualify as general publics. Such a notion of a partial public is based on very weak institutional and constitutional supports. The rights foundation of such an entity is weak, as there is no fully developed supranational level with an independent rights-granting ability. Citizens have the right of free movement and the right to work, but they obtain their political rights from the national level.

According to the EU as a *value-based community*, what is the underlying conception of public sphere? This model, strictly speaking, conceives of a coherent public sphere. It emulates the public sphere notion associated with the nation-state. The model presupposes a common European citizenship and a set of common institutions at the EU level that are able to foster a common European public sphere. The model goes well beyond institutional requirements to include common cultural factors, such as a common language, a common identity, and a shared sense of community. These are seen to rest on pre-political values. Analysts who work with this conception of community, denounce the EU precisely for lacking a public sphere with such foundations, and a critical question is how profound this deficiency is in

today's Europe. To what extent do current developments move the Union towards this model? A common religion is probably one of the strongest foundations for a coherent community. During the European Convention's work, there were strong efforts to set up the EU as the bearer of the Christian character of the European heritage, as is shown in Schlesinger and Foret's chapter.

According to the EU as a *rights-based post-national union*, what is the underlying conception of the public sphere? This conception of the EU does not conceive of the public sphere in monolithic terms, but rather as a set of overlapping publics. Critical here is the distinction between general and strong publics, which are both necessary prerequisites. Strong publics are essential components of democracy through ensuring representation and accountability. They again depend on viable general publics so as not to atrophy, succumb to co-optation or fall privy to the colonising impetus of instrumental rationality (colonisation of lifeworld thesis). When applied to the EU, it is clear that the EU does not have a fully-fledged or overarching general public. Our assessment of the EU - from the vantage-point of this model - must take as its point of departure not only the EU's present institutional constellation but also its potential public-sphere-fostering role. Here strong publics can play a central catalytic role – to spark the development of a general public sphere.

The EU – moving beyond a narrow functional regulatory regime?

This report approaches the question of whether the EU is moving beyond a narrow regulatory regime from three complementary angles. The first part, chapters 1–3, looks at aspects of the EU's general public. The second part, chapters 4-6, addresses aspects of the EU's strong publics (with particular emphasis on the Charter and the Constitutional Convention). The third and final part, Chapter 7, looks at civil society. Cognizant of the contested character of the EU, this proposes an analytical framework to map the character of the EU's *social constituency*.

Part 1: Aspects of the EU's general public

In Chapter 1, Patrizia Nanz sets out on the notion that any bestowal of democratic legitimacy for governing Europe must depend upon the creation of a European public sphere. This entails a deep-seated habit of arguing or engaging in public debates with fellow citizens across national borders where solidarity between them and loyalty to the institutions of Europe can be

fostered. Nanz re-examines available concepts of the public sphere, their usefulness and shortcomings in the analysis of today's de-centred and multicultural societies and, in particular, of the heterogeneous polity of the European Union. Nanz inquires into a concept of the public sphere that might respond to the irreducible diversity of collectivities on the one hand and to the transnational interconnections of power on the other. She outlines an "inter-discursive" concept of the public sphere, which helps to elucidate how the notion of identity and citizenship can function in a post-national epoch. The empirical assessment of whether there is (or is not) a transnational public sphere in Europe depends on which of the diverging conceptions of the public sphere one opts for. Nanz argues that the inter-discursive model of the public sphere enables us to form an analytical conception of "European citizenship" as a vantage-point which will allow us to rethink transnational modes of civic engagement and democratic exchange between various forms of publics and policy-making bodies, and of "European identity" as a form of intercultural consciousness, a European (constitutional) public dialogue where participants come to see their discourses and histories as woven together from a multiplicity of "voices".

In Chapter 2, Tanja Hitzel-Cassagnes argues that with regard to legitimacy, the de-formalised and incremental constitutionalisation of the European Union is deficient. But she discusses whether the practices and processes of constitutionalisation can be part of a "post-statal" account of constitutionalisation, and whether there are traces of legitimacy-enhancing mechanisms to be found in the existing institutional structures and practices, in the actual processes of law-making and law-application. Hitzel-Cassagnes examines the normative qualities and potentials of the European political system from the angle of a "reflexive constitutionalisation" that focuses on the structures of communication and argumentation between political and legal institutions. The challenge of her argument is how to identify analytically the "force of the better argument" in the structures and practices of communication and to evaluate the effects of these on the individual citizen in terms of inclusion and participation. Hitzel-Cassagnes relies on the notion of discourse theory as a normative political theory of social interaction and communication, and seeks to demonstrate the analytical and practical merits of this theory. She does so by developing a conceptual and analytical scheme to describe processes of communication on the basis of a "discourse ethics". Hitzel-Cassagnes shows how a structural examination and evaluation of processes of communication can be carried out, by way of a case study where she describes, explains and evaluates the institutional discourses about the "right of access to information" within the European Union.

In Chapter 3, Ruud Koopmans and Barbara Pfetsch argue that European integration from above must be accompanied by a "Europeanisation" of public communication in order to overcome its lack of legitimacy and popular involvement. The chapter relates to the continuing debate over the Europeanisation of national public spheres as a starting point for inquiry and presents findings on the contents and nature of public claims-making and debate on European issues in Germany. The media are seen as prime actors in the public sphere that not only convey the issues of other actors in public debate but also speak with their own voices and thus possess the potential to influence the public agenda towards favourable European frames and positions. The authors investigate whether the media, in comparison with other actors, operate as a motor of Europeanisation or instead slow the process down. In the empirical part of the paper – drawing on data from the EUROPUB project – they analyse the communication through which political actors and the media make public demands on European issues on two levels. First, all claims made by collective actors that appear in the news section are content analysed for four German print-media outlets, addressing different types of publics. Second, the claims made by media themselves in their editorials are retrieved and analysed. The findings show that the claims made by the media and the frames that they advocate them through are generally more European in scope and more positive towards European governance than those by other political actors, who tend to de-emphasise the European dimension of issues and take more critical positions on European integration and EU institutions.

Part 2: Aspects of the EU's strong publics

The question of language use is of crucial importance to the understanding of political relations in a multilingual environment, as is demonstrated by Chris Longman. In Chapter 4, he analyses the political and institutional aspects of the "language regime" of the European Convention on the Future of Europe, and shows how the challenge of political communication and constitutional deliberation in the context of linguistic diversity was managed. Language does not simply have a communicative function in politics; it is also one basic marker of political group identity, and, the language policy of a particular state or political system impacts upon the ability of different language communities within that system to participate in the various spheres of social, economic and public life. The Convention clearly aimed to enhance its legitimacy by exposing the mechanics of treaty reform to the scrutiny of citizens, civil society and national parliaments. This greater transparency could only be facilitated by the provision of information and records of proceedings in all the official languages of the Union. However,

there are clear practical and normative challenges to this type of language regime, which have become increasingly obvious in the EU institutions, and which became apparent during the Convention. Longman analyses the tension within the Convention between the needs of communicative efficiency and the needs of identity recognition and the avoidance of linguistic marginalisation and disenfranchisement. He finds that the language regime established by the Convention reflects a pragmatic approach, resulting from the understanding that to insist on full multilingualism of all official languages as working languages in all Convention contexts would have been financially ruinous and practically unfeasible. Longman discusses whether this is an approach increasingly used in the EU, and if so, the normative challenges this raises.

The question of an ethical foundation of the EU may serve as one of the factors giving a clearer sense of the Union's outer bounds and an attendant notion of "the other", as increasingly evident in the debates on Turkish membership. What does the debate on religion in the EU tell us about the EU's public sphere – is it best conceived of as a coherent and ethically oriented sphere or does it better reflect the workings of segmented publics? In Chapter 5, Philip Schlesinger and François Foret show how debate over the place of Christianity in European politics and society has made an important comeback. The European Convention's deliberations over the EU Constitution have thrown into relief the role of religion in defining 'Europeanness'. In the context of a secularised Europe, Christianity is fighting for its institutional recognition and space in the public sphere. Religion may offer a cultural identity and work both to resist and to accommodate change. However, the Christian mobilisation has been challenged by those who defend the secular order. The debate over whether Christianity should be seen as constitutive of European identity has been framed by wider concerns about collective identities and memories in Europe. Here, diverse histories and contemporary multifaith, multicultural and multiethnic realities, not to mention the continuing differences between Christian churches themselves, make the project of Christianising European identity a formidable challenge.

In Chapter 6, Geir Ove Kværk analyses and discusses the involvement of organised civil society in the two Conventions on constitutional or treaty-revision matters: the Convention on the Charter of Fundamental Rights and the Convention on the Future of Europe. Kværk examines the procedures for involvement of civil society in the two Conventions and looks at the extent of their involvement. Which parts of civil society were involved? What were the arguments they presented to the Conventions? Kværk analyses written contributions from civil society organisations that have been

posted on the Conventions' web sites, and the presentations made by organised civil society groupings at plenary sessions of the two Conventions. Kværk finds that the procedures for involving civil society were reduced to giving access to voices and arguments, not tailored to encouraging physical representation. The procedures favoured an elite, made up of large organisations with established capacities at the European level. However, the Conventions' openness did enable many sorts of organisations (and in the Charter Convention, even individuals) to make statements in the official channels established by the Conventions and their Secretariats. The logic behind the hearings and the publication of contributions from civil society can basically be seen as a reflection and enhancement of the debates on the constitution-making process of the Union, where the Conventions were "listening without committing to an answer". Although visions consistent with all of the three CIDEL models were presented by the civil society organisations, the most prevalent vision evident from the contributions was one that moves away from the economic focus of the EU, towards a deeper community. This community was depicted as based either on the (re-) discovery of common values and norms, or based on a rights-based development of a community and identity of the European integration project.

Part 3: Conceptualising the EU's Social Constituency

The purpose of chapter 7 by John Erik Fossum and Marit Eldholm is to heighten our understanding of the nature of the EU's social constituency. By *social constituency* is meant the structure of demands and expectations that citizens and groups place on the EU. The EU is widely held to be a functional-type organisation. If this is a correct assessment, it would mean that its social constituency would be made up of utility-oriented, economic interest organisations and be much narrower than that of a state. Is such a conception of the EU consistent with citizens' demands and social movement involvement in, and engagement with, the EU? Is it consistent with the EU's self-conception, and how it defines its social constituency? This chapter seeks to develop a conceptual-methodological framework that aims to identify the EU's social constituency and spell out its specific traits. To this end, Fossum and Eldholm seek to fuse elements of a modified version of Axel Honneth's approach to recognition (*the what*) with the contentious politics approach (*the how*) associated with Charles Tilly and associates (see for instance Tilly 1978; Imig and Tarrow 2001; McAdam et al. 2001). The chapter provides empirical documentation of several of the relevant categories of actors and demonstrates *how comprehensive* a research effort that a proper assessment of the EU's social constituency requires.

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Chapter 1

Multiple Voices: An Interdiscursive Concept of the European Public Sphere

Patrizia Nanz[1]
Centre for European Law and Politics (ZERP), University of Bremen

In modern Western democracies the public sphere, mediating between political authority and the people, is an important source of legitimacy[2]: it is the sphere, (analytically) distinct from both the state and the economic market, in which the collectivity of citizens can organize itself as the bearer of "public opinion" and thus exert a certain amount of influence over policies. Unlike American society, where there is a weak state with no idea of a centralized channelling social conflicts, Europe today remains a political region that is still identified with a welfare state and a nationally organized political system capable of creating social integration (Touraine 1999). Yet, the authority of the single nation state is gradually being undermined by the process of European integration. The most evident achievement of this development has been the establishment of the principles of *direct effect* and of the *supremacy of Community law* over national law. Since the European Union is no longer merely an instrument for implementing the will of the Member States, any bestowal of democratic legitimacy for governing Europe, must

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[2] Legitimacy can be understood as a general compliance of the people with decisions of a political order that goes beyond coercion or the contingent representation of interests. Normatively, democratic legitimacy results from a rational agreement among free and equal citizens.

depend upon the creation of a European public sphere as the institutionalized arena for discursive interaction beyond the limits of national boundaries (Burns et al. 2000) If the "progress towards an ever closer Union", as epitomized in the Treaties of Maastricht and of Amsterdam, is to lead beyond the present accommodation between the sovereignty of the nation states and of self-regulating markets (precluding supranantional political development); if the European Community is to re-invent itself on the basis of a Europeanwide political mobilization and of citizen identification, the idea of transnational dialogue and transnational citizenship practices becomes indispensable. Only through a deep-seated habit of arguing or engaging in public debates with fellow citizens across national borders can solidarity among them and loyalty to the institutions of Europe be fostered.

Theorists of European Integration, in particular Social Democrats and Constitutionalists, are nearly unanimous in deploring the "democratic deficit"[3] in the European Union and the absence of a political community defined by a shared European identity (as a basis for mutual solidarity) (see for example Scharpf 1996: 136; Scharpf 1999; Grimm 1995: 282; Offe 1998). The loudness of these complaints, however, seems to be inversely proportional to the volume of substantive research on whether there is an emerging European public sphere as an arena for transnational political participation and for the intercultural formation of collective identities. Before addressing the question of whether (and how) public discourse across lines of national and cultural (not to mention linguistic) difference is possible, it seems important to re-examine available concepts of the public sphere, their usefulness and short-comings in the analysis of today's decentered and multicultural societies and, in particular, of the heterogeneous polity of the new Europe. We have to inquire into a concept of the public sphere that might respond to the irreducible (social and cultural) diversity of collectivities on the one hand and to the transnational interconnections of power on the other.

In this essay I shall begin by briefly analysing the contemporary debate about European constitutionalism which leaves us with a dilemma in respect to (political) European integration. I shall then go on to show how Habermas's deliberative theory of democracy can overcome the resulting false dichotomy between global markets and national democracy, but also discuss the limits of his conception of the public sphere. Finally, I shall outline an

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[3] While the decisions of the EU institutions have a direct effect on the citizens, the only form of legitimation available today is a highly indirect one derived from the (democratically elected) national governments, rather than from the collectivity of European citizens.

"interdiscursive"[4] concept of the public sphere based on Bakhtin's dialogical theory of understanding which helps to elucidate how the notion of identity and citizenship can function in a post–national epoch.

False Dichotomy: Global Markets vs. National Democracy

The dialogical concept of a public sphere aims to move two dilemmatic views with which the contemporary European constitutional debate seems to leave us (Gerstenberg 1998). *On the one hand*, the view – in tradition with economic liberalism – that separates European economic law from the idea of democracy, then claims an democracy-independent utilitarian or functionalist substitute legitimation for European economic law as market-enhancing, and finally argues that European economic law *is* the true constitution of the EU (Petersmann 1991). *On the other hand* the view – mainly sustained by Social Democrats – which assumes that democracy both for normative and for functional reasons presupposes the shelter of the nation state as a guarantor of a „collective identity" and of effectiveness, and which then concludes that the basic decisions about the European Community should be left with the Member States, where they can be, so the background assumption, democratically warranted (Scharpf 1999; Grimm 1995).

At the core of the first view is the idea that the private liberties of the *market citizen* –– self-ownership, stability of property, and the obligation of contract –– are conceptually prior to the political liberties.[5] According to this view, the only function of a constitution is to withdraw a set of identified "private rights" from the vicissitudes of pluralist politics, to place them beyond the reach of the majorities and to establish them as *legal* principles to be applied by the courts. This liberal–individualist theory views politics as the aggregation of the individual preferences of self-interested actors. The political process of opinion and will formation is determined by the competition of collectivities acting strategically and trying to maintain or acquire positions of power. Accordingly, public deliberation, insofar as it pertains to a shared conception of the public good,[6] drops out altogether. Political discourse consists of bargaining and seeking compromises that satisfy

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[4] With the term "interdiscursive" I intend to stress the possibility for people to talk across lines of socio-cultural and national diversity, i.e. the possibility of translation between discourses (without ironing out their differences).

[5] For a particularly crisp contemporary statement of this position, see Epstein 1995.

[6] In the liberal model it is assumed that there is no such thing as the common good above and beyond the sum or the trajectory of all the various individual goods, and so private interests are the legitimate basis of political discourse.

as many private interests as possible. This view in the end assumes that meaning can be reduced to unequivocal symbols -- prices -- which only need to be publicized to guide coordination. The vision of the EU suggested by this approach is quite straightforward: while democratic politics remains bound to the nation states, the economic rights and liberties of the market citizen are the true constitution of the EU (Mestmäcker 1998: 615; Majone 1998). From this perspective, it is the task of the Community to implement and protect a system of open markets and undistorted competition, whereas the *political rights* remain vested in the Member States which retain those legislative powers *that are compatible with open markets*: The chain binding law and democratic politics together breaks; European law has its own, democracy-independent utilitarian substitute legitimation as market-enhancing; and there is, under such a system, no need for a constitutional project aimed at the extension of citizenship from the national to the Community level.

The social-democratic counterposition – or demos view - reverses this image and is concerned with safeguarding the priority of politics over markets. The reference point is T. H. Marshall's (1975: 15) definition of social policy as the use of "political power to supersede, supplement or modify operations of the economic system in order to achieve results which the economic system would not achieve of its own, ... guided by values other than those determined by open market forces". The nub of this approach is to say that democratic politics -- in the strong sense of solidaristic redistribution and of reciprocal justification between free and equal citizens -- cannot be established on a European level. The argument for this conclusion runs like this: Democratic self-government -- understood as the capacity to solve problems through collective action and will-formation -- presupposes a high degree of cultural homogeneity of the society that wants to constitute itself as a political unit. Without a collective identity citizens would not be prepared to treat their fellow citizens´ interests in regard to particular issues as their own. Political will-formation is thus conceived as people reasoning together to promote a common good that is more than the mere sum of individual preferences. Private interests are revised as they are transcended in the course of public debate. Accordingly, in such a civic-republican conception (and especially in its recent communitarian interpretation) the public sphere, and its basis in civil society, acquires a crucial significance. It is seen as a medium of democratic decision-making itself, i.e. a collection of common spaces or forums, in which citizens exchange ideas and achieve a "common mind" (Taylor 1995). But public deliberation in this view can take place only within a pre-established demos. This requirement of a substantive solidaristic bond

based on cultural homogeneity cannot, however, be met on the European level, given the fact of the ethnic, cultural, linguistic and economic heterogeneity of the EU. Any further step towards further integration would therefore not be politically desirable – it would alienate us from our democratic commitments, destroy (contrary to the principle of subsidiarity) local autonomy and in the end would establish the predominance of bureaucratized politics and of the market paradigm over cultural identity (Grimm 1995; Offe 1998; Scharpf 1999).

To conclude, the dilemma, to which these two views of democratic politics have led, is this: e*ither* the citizens are transparent to one another, and generous because palpably similar; *or* they pursue their self interest without regard to other. *Either* the citizens will share constitutional fundamentals, and therefore can agree on to accord one another extensive rights to mutual regard. *Or* they do not share them, and only inertia can shelter them from the ravages of their differences. Both, social democrats and economic liberals, agree that the fundamental dichotomies are those of market and politics, egoism and visceral solidarity. They further agree that the globalization of markets undermine the nation-state foundations of politics. Hence, the Social Democrats' nostalgia for a return to the sovereign nation-state and the Liberals' jubilation at the prospect of a world economy without political interference.

There is, however, a third trend in the literature of political theory that deconstructs the notion of demos and bases democracy on weaker -- communicative - presuppositions. Instead of presupposing that democratic legitimation requires a certain (pre-political) homogeneity of the constituency of a polity, this view argues that legitimation is generated through deliberation of free and equal citizens. Habermas's proceduralist theory of deliberative democracy (Habermas 1992) formulates an idea of democratic constitutionalism which fully accounts for the universalistic core of this idea and detaches it from the particularism of any specific national (political) culture.[7] According too such a perspective, there is no a prior reason why Europe, which has been integrating economically, administratively and to some extend socially, cannot subsequently create the politically necessary communicative context with the core being formed by a political public sphere.

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[7] "The ethical–political self-understanding of citizens in a democratic community must not be taken as an historical–cultural *a priori* that makes democratic will-formation possible, but rather as the flowing contents of a circulatory process that is generated through the legal institutionalisation of citizens' communication. This is precisely how national identities were formed in modern Europe. Thus, it is to be expected that the political institutions to be created by a European constitution would have an inducing effect" (Habermas 1995: 306-7).

Revisiting the concept of the public sphere

In a nutshell, "public sphere" means a social space in which members of a society discuss matters of common interest and form public opinions about those matters. The participants clarify and negotiate their interests and goals, express social demands and potentially decide upon collective action. They exchange convictions and value-judgments, and may articulate a collective identity out of a set of self-understandings. Public communication takes place through a variety of media (e.g. newspapers, books, television, Internet) and also in face-to-face encounters: in informal conversations in freely accessible settings (such as bars and cafés, train compartments, street corners etc.) or in institutionalized meetings of voluntary associations (such as social movement organizations, political parties, interest groups, citizen's initiatives etc.). The importance of the public sphere lies not only in its potential to form public opinion, but also to (re)produce public culture and integrate society.

The "public sphere" has many advantages over other concepts: It invokes "identity", but does so with more emphasis on its discursive 'constructedness'. It stresses the possibility of collective action rather than the nature or characteristics of individuals.[8] Unlike "community", which suggests a fairly homogenous collectivity and often connotes consensus, the notion of the public sphere can accommodate a plurality of perspectives while emphasizing the open-ended interaction between cultural and social identities. Unlike "culture", it hints at the existence of a site of interaction with other cultures and classes, and stresses internal differences as well as a continuing self-formation as opposed to a given body of practices distinguishing one cultural group from another. Unlike "hegemony", the public sphere is less an emphasis on public authority and, hence, more open to alternative or opposing views.

In Habermas' proceduralist model of deliberative democracy the public sphere plays a key role for modern constitutional states.[9] His recent account

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[8] Public spheres are among the most important (and underestimated) sites in which social and cultural identities are constructed, deconstructed and reconstructed. Collective identities, here considered as an *ensemble* of (self)understandings and shared meanings, should not be conceived as a precondition for public discourse but rather as being constantly (re)produced through processes of public communication. In other words, the conception of the public sphere as a plurality of publics with different perspectives shows that a (preexisting) homogenous community (along national or cultural lines) is in no case a necessary requirement for the constitution of a public sphere.

[9] The concept of the public sphere finds its most sophisticated elaboration in Habermas 1962. For the contemporary debate of European integration his reconceptualization in the 1990's is, however, more relevant.

provides a "two track" (*zweigleisig*) solution to the problem of socio-cultural complexity in today's differentiated and heterogeneous societies: political decision making in institutions must be open to the general public (as the bearer of public opinion) and yet structured in such a way as to be effective. Parliament (or equivalent decision-making bodies) provides an institutional focus for a broader, decentered communication dispersed across the public sphere and, potentially, involving all citizens. Habermas's theory of democracy is normative in the sense that legitimacy for governing (at the nation-state and European level) is seen as dependent upon the institutionalization of an overarching, unifying public sphere.

A 'constructive' critique of the Habermasian discourse-theoretical conceptualization of the public sphere can open the way for a 'dialogical' model that is better suitable to depicting the complex and variegated reality of public life in Europe today. In particular, there are four lines of development: (a) By underscoring the conception of critical-rational discourse, Habermas neglects the extent to which public communication does not consist in argumentation aiming at consensus, but also involves questions of individual interest, social and cultural recognition, power, prestige etc. Participation in public debates is not simply a matter of formulating contents but also of being able to speak "in one's own voice", thereby simultaneously enacting one's socio-cultural identity through specific expressive modes or rhetorical features.[10] Habermas tends to see the public sphere as an essentially neutral network of overlapping subpublics which is equally hospitable to any form of socio-cultural expression. Yet, there is no such thing as a clearly defined, transparent language.[11] All utterances are situated in specific cultural and social-historical contexts and are framed by their respective expressive modes or "speech genres" (Bakhtin 1986)[12].

(b) While accommodating a multiplicity of public arenas, Habermas's conception of the public sphere presupposes a single, overarching public sphere under the umbrella of a common liberal political culture and a shared constitutional identity: His idea of "constitutional patriotism" refers to a kind of post-national identity whose normative reference point is the democratic constitution rather than the nation-state, its territory or a dominant cultural tradition (Habermas 1993). Seen from such a 'constructivist' perspective,

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[10] For the purpose of appropriately analyzing the public sphere, other forms of public communication (e.g. identity-narratives, story-telling, bargaining etc.) might have to be considered (see Johnson 1993; Young 1996).

[11] This argument has been convincingly made by D. Davidson (1986).

[12] Speech genres are forms of utterances specific to socio-historical contexts, which both constrain and facilitate communication (Bakhtin 1986).

which is, of course, much better suited to our multicultural societies than the 'holisitic' conception which prevails – as we have seen - the 'demos' view on European integration, European identity is conceived of as an overarching normative ideal which transcends national and socio-cultural identities. We could, however, radicalize Habermas's definition of the public sphere as a communicative network of public arenas and then envisage the criss-crossing and overlapping publics via Wittgenstein's metaphor of "family resemblances". In this manner, the communicative network of public discourses would have no threads of a pre-given (political) culture or collective identity enmeshed in it. In such a perspective, post-national identities, rather than an overarching normative ideal, become *inter*cultural or 'interdiscursively' constructed in the sense that they are formed in an on-going dialogical interaction *between* cultural or national discourses or "voices" (Bakthin).

(c) Habermas's theory of democracy underestimates the role of cultural conflicts in contemporary multicultural societies and the power relations involved therein. For the theorists of deliberative democracy, the plurality of specialized and competing publics is democratic only if they are embedded within a single, all-encompassing open civic public sphere. They fear that pluralism, leading to conflicting values and interests, could cause the public sphere to collapse into a dog fight of competing publics (see for instance Bohman 1996). Such an approach, however, cannot account for the fact that conflict resolution in situations of fundamental cultural heterogeneity will require less consent and agreement (based on a shared political culture) than a process of cooperation, and above all the capacity (and the willingness) to dialogically explore and negotiate (social and cultural) differences. It is thus important to give a theoretical account for learning processes which can take place in interactions between publics with diverging socio-cultural positions.

(d) Habermas's "two track model" of deliberative democracy, where institutionalized decision-making processes must be open to inputs from informal (or general) publics, does not seem adequate to the gradual transformation of today's decentered and heterogeneous polities: the proliferation of decision-making bodies within the governing system (described by the literature on "governance"), poses considerable problems for his conception of the division of political labor between informal public and the formal institutions that regulate the flow of influence among powerful, non-governmental agents. This is particularly true of the EU's multi-level governance which includes Communitarian institutions as well as nongovernmental (supranational, national and subnational) policy-making

bodies.[13] The horizontal networks linking these different 'publics' constitute transnational policy communities which deliberate specific issues (e.g. migration, environment). Yet, if we conceptualize the public sphere as a communicative network where different publics partially overlap ("family resemblances"), the emerging features of the EU as a multi-level system of policy-making can also be seen as offering the chance for the creation of new communities of political action. According to such a 'pluricentric' view of European politics, we should, of course, explore new institutional arrangements which will ensure the accountability of democratic decision-making bodies (Gerstenberg and Sabel 1999).

Toward an interdiscursive model of the public sphere

A lively political and academic debate has recently emerged about the normative viability and empirical possibility of a European public sphere. Yet, there is little agreement in the literature on whether there is (or is not) a transnational public sphere in Europe. The empirical assessment depends on the (diverging) conceptions of the public sphere. Most authors who deny even the possibility of an emerging European public sphere implicitly presuppose a substantialist (or "holistic") idea of the public as a culturally integrated homogenous political community or *demos* with a shared collective identity, a common language and media system.[14] For Jürgen Gerhards, for example, there would be a European public sphere if (and only if) national publics would address European issues and take a European rather than national perspective on these issues (Gerhards 1993; 2002). Not only are such views idealizing the unitary nature of national publics, but there is also no reason why the empirical possibility of the European public sphere should be measured on the normative basis of the national public sphere (see also Kantner 2002; Van de Steeg 2002): the EU is very unlikely to develop into a traditional nation-state writ large. And the development of a "European perspective" might not depend on a converging process of the member-states' perspectives but rather on the recognition of divergent (national) perspectives as legitimate *within* European politics.

As historical analyses of the public sphere show,[15] there has never been a single authoritative public sphere in which citizens formed *a* public opinion or *a* common collective identity. Even at the level of nation-states, the idea

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[13] I.e. policy communities of experts, agencies, corporations, lobbies, NGOs, and other associations.

[14] See authors as different as: Smith 1992; Grimm 1995; Kielmansegg 1996; Offe 1998; Scharpf 1999.

[15] See for example Baker 1992; Eley 1992.

of the socially and culturally integrated community was always a constitutive myth rather than a sociologically accurate depiction of collective identities. This is even more true of contemporary heterogeneous societies where political complexities, socio-economic inequalities and cultural pluralism make the public sphere a realm of, at best, loosely connected and fragmented discourses in which many groups of individuals enact collective identities and negotiate political will.[16] Starting from the actual plurality of publics it has become clear that a (pre-existing) community along national or cultural lines is itself not a necessary requirement for the constitution of a transnational (or intercultural) European public sphere. How can we then conceptualize a notion of "the public sphere", which neither draws on the idea of a cultural homogeneity among citizens nor withdraws into a purely procedural conception of the public sphere as an anonymous, unsituated network of communicative forms?

In the following I shall outline an *interdiscursive model of the public sphere* which supposes, in contrast not only to social democratic (eurosceptical) or demos views, but also to more discourse-theoretical ones, the *pervasiveness of ambiguity* or indeterminacy. According to such an approach, the very (ethical/cultural) differences which obstruct understanding in the demos view, and which are to be contained by 'constitutional patriotism' in the discourse-theoretical view, are the engine of understanding, to be achieved through the mutual exploration of difference in a world of pervasive ambiguity.

I propose to conceptualize the European public sphere as a pluralistic social realm of a variety of sometimes overlapping or contending publics engaged in a transnational (intercultural) dialogue and citizenship practices. Accordingly, European identity can be imagined as produced by an on-going process of struggle between different socio-cultural and national[17] perspectives or discursive "voices": the official discourse of the EU, the discourse of social scientists, the (mainly nationally-organized) media discourse of intellectuals

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[16] The fact that within nation-states we find a multiplicity of publics that intersect, makes transnational public discourse conceivable in principle. From this perspective, a transnational public sphere is not only possible, but its internal plurality would differ from the national one only in degree and not in nature. The hope that there can be an institutionalized public sphere where people debate across lines of socio-cultural and national differences gains some plausibility if we consider the actual plurality of publics within a nation which, in turn, may interact with the many different publics of other nations.

[17] National identities are, of course, neither unified nor unitary and cannot but be seen simply as "other" in relation to what is outside their borders. Instead, the "other" always emerges forcefully within a national public discourse (e.g. the voices of outsiders, immigrants, etc.). See Gilroy 1993.

and opinion leaders, the informal discourse of people in everyday life and so on. Instead of simply containing or limiting pluralism, my conception of the public sphere actively values the everyday life exploration of difference between strangers with heterogeneous cultural/ethical backgrounds. The associated dialogical conception of citizenship can account for the struggle that most of us experience living under conditions of radical pluralism and points to an image of a European political identity with multiple voices and innumerable perspective on common social problems.

Interdiscursivity proceeds from the idea that there is a constant interchange between the discourses of different publics, and therefore that all public discourse is intrinsically "multi-voiced". Thus, such an approach underscores the *process* of negotiation and conflict in the creation of European identity and the power relations involved therein. It does not make any claims about the cohesiveness of public discourse. It thus sees the problem of the possibility of an additional "superpublic" comprehending more limited publics as an empirical one. In terms of communicative standards, depending on the socio-cultural context and speech situation, it includes also forms of discourse other than argumentation (e.g. narratives). Such an approach assumes that a concept of the public sphere should be normative only to the extent that it helps to expose "interdiscursive asymmetries" caused by hegemonic discourses (the suppression of subaltern counter-publics, exclusion of voices, etc.).[18] More radically than Habermas' concept it stresses the plurality of *unshared* socio-cultural perspectives[19] (within and between publics) and the possible disagreement (or misunderstanding) between these perspectives. Moreover, it suggests the possibility of an ideally symmetrical dialogical exploration of cultural and ideological *differences* (rather than similarities), i.e. a mutual perspective-taking that forms the basis for the on-going negotiation of an *inter*cultural collective identity and transnational political culture. This conception of the public sphere, unlike the universalizing ideal of a single, overarching public, is seen as the task, as yet unfulfilled, of a "conversation we have to open up" among the multitude of socio-cultural and national collectivities or 'voices'.

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[18] This would require a political sociology of public life in which multiple but unequal publics interact. Using the concept of the public sphere as a critical tool, political scientists could thus expose the limits of democracy as it exists today and explore new forms of democratic exchange within the context of the multilevel structure of EU decision-making.

[19] Bakhtin argues that we share meaning only partially and that what we share is in any case not as interesting as what we do not share. We cannot learn or progress from shared meaning. From the same perspective, he claims that doubt is a precondition for the co-pursuit of truth, disagreement a precondition of mutual understanding.

How is it possible for members of different publics to communicate across lines of socio-cultural and national diversity? The intercultural communication involved in a pluralistic public sphere "requires multicultural literacy, but that […] can be acquired through practice. In fact, the possibilities expand once we acknowledge the complexity of cultural identities. *Pace* reductive, essentialist conceptions, cultural identities are woven of many different strands, and some of these strands may become common to people whose identities otherwise diverge, even when it is the divergences that are most salient" (Fraser 1992: 127). These "common strands" – warranting the commensurability of discourses – are the constantly (re)generated and negotiated collective (self-) understandings, which are produced in public communication and which, in turn, become the cultural framework for everyday life experiences.[20] And the reality of postwar population movements, transnational capitalism, global telecommunication and the explosion of mass consumption make the development of theories of cultural translation or multicultural literacy all the more pressing.[21]

Paradoxically in many Western societies, cultural difference has become the basis for an exaggeration of difference and, with it, the assertion of the incommensurability of cultures (Werbner and Modood 1997a; 1997b). Against a "nationalism" or "multiculturalism based on difference" which risks the compartmentalization of cultural or regional/national groups by emphasizing their mutual distinctness, an interdiscursive approach emphasizes the *processes* involved in the creation of culture and identity. Starting from the assumption that culture is always sited and negotiated,[22] such an approach to collective identity argues for the possibility of new, positive identity-fusions, transcending fragmentation, but at the same time recognizing the differential interest that (disadvantaged) social or cultural groups in a post-national epoch have in sustaining boundaries. Its task should be to envisage policies where cultural or national collectivities engage in reflexive self-critical distancing from their own discourses, and hence come to recognize the potential validity of other discourses.

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[20] In the empirical case study of my doctoral thesis I have taken the *inter*cultural identity of – high-skilled as well as low-skilled - migrants and their sense of belonging (which I analyze through a series of in-depth interviews) as the basis for an interdiscursive conception of identity-formation. See Nanz 2006, and also Nanz 2000.

[21] As Z. Bauman (1999: 201) puts it – without specifying the presuppositions of this claim – "Far from being a peculiar pastime of a narrow set of specialists, 'translation' is woven into the texture of daily life and practised daily and hourly by us all. We are all translators; *translation* is *the common feature in all forms of life*, as it is part and parcel of the 'informatics society' modality of being-in-the-world".

[22] That is, culture can be understood properly only as the historically negotiated creation of more or less coherent symbolic and social worlds.

The question of the possibility of "multicultural literacy" can draw on arguments in the philosophy of language.[23] Donald Davidson (1986) argues that understanding within a language is always itself a continuing translation of the ideolects of speakers, and thus translation between languages is, in fact, only an extension of what native speakers do all the time when trying to make sense of one anothers' meaning.[24] In a similar vein, Mikhail Bakhtin (1986) has argued that language is radically interdiscursive or "dialogical"[25], i.e. that all utterances are part of an open-ended dialogue where meanings (for instance what we mean by "Europe") are negotiated in the interaction between the discourses arising from the speakers' different socio-cultural and ideological positions. Communication across lines of socio-cultural and national difference or "multicultural literacy" is possible precisely because in public discourse cultural identities and selfhood are enacted liminally, on the boundaries of self and other, of identity and difference. Bakhtin's notion of 'speech genres' stresses the rhetorical and expressive aspects in language use that are typical within specific socio-historical contexts or for given ideological perspectives. If the exploration of ambiguity (and misunderstanding) in the continuing clarification of meaning is a necessary precondition for understanding (and self-understanding!), and if, therefore, national languages include a plurality of different sub-languages or speech genres, then we can argue that the linguistic and socio-cultural diversity of Europe[26] is not something qualitatively different from the diversity, which exists within national communities.[27]

Thus, a public as a collectivity of persons connected by continuous processes of communication over particular aspects of social and political life can, in principle, extend beyond national borders. Transnational (or intercultural) communication has, however, two necessary requirements: the participants of public debates must presuppose that their different cultural/national perspectives on a certain issue are not incommensurable, i.e. that mutual understanding or translation is possible (otherwise they could not even

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[23] This is shown in detail in Nanz 2006 (chapter 5).

[24] He argues that understanding requires the exploration of ambiguity in the continuing clarification of meaning between the speakers. In this sense, misunderstanding is a precondition for understanding (see Davidson 1986).

[25] "Any understanding is imbued with response and necessarily elicits it in one form or another: the listener becomes the speaker. A passive understanding of meaning of perceived speech is only an abstract aspect of the actual whole of actively responsive understanding, which is then actualized in a subsequent response that is actually articulated" (Bakhtin 1986: 68).

[26] For the creation of a European public sphere the diversity of languages is, of course, a serious problem. As argued above, it is not a normative but a practical one (see Laitin 1997; and also Coulmas 1991).

[27] The difference is only a matter of degree, not of nature.

disagree!) and they must recognize each other as legitimate speaker within a (shared) public sphere whose statements are taken seriously[28]. In pluralistic societies, and all the more in the variegated public life of the European polity, public communication depends on the commitment to a cognitive openness vis-à-vis the views of diverging addressees with the telos of cooperative problem-solving. An interdiscursive approach stresses the plurality of cultural/national perspectives but focuses on the dialogical mechanism of mutual translation among them. It assumes that there are two conditions for such a dialogical translation which set out the limits of interpretative pluralism and the ambiguity of meaning: the (idealizing) presuppositions of a shared system of meaning or co-reference of all perspectives and the (social) presupposition of "addressivity", i.e. the engagement in a mutual exploration of difference in the attempt of perspective-taking (which is more than their formal-pragmatic recognition as participant in a discourse!).[29] This second condition can be measured empirically, for example through a qualitative analysis of media discourses which explores whether other Europeans fellows are accepted as legitimate contributors in national debates about a common concern (e.g. the BSE-scandal) and, more importantly, whether we can observe a transnational dialogue as an exploration of different viewpoints which sets in motion a process of reflective inter-societal learning. There are, of course, various degrees of "transnationalness", i.e. more or less intense interactions between national (regional, local) public spheres with more or less *substantial* inclusiveness or mutual perspective-taking.[30]

The interdiscursive model of the public sphere enables us to form an analytical conception of "European citizenship" as a vantage-point which will allow us to rethink transnational modes of civic engagement and democratic exchange between various forms of publics and policy-making bodies,[31] and of "European identity" as a form of *inter*cultural (or "pastiche") consciousness without falling into the trap of Euro-nationalism[32] in any form. By listening

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[28] Nationalist reactions (e.g. "*The* Spanish do not know what the rule of law means") deny this legitimacy and treat perspectives from other member states as observations of outsiders.

[29] I have elaborated these two conditions of dialogical deliberation in Nanz 2006 (chapter 6).

[30] For a convincing empirical analysis of the degree of 'transnationalness' of the European public sphere (e.g. the print-media representation of the Haider case in Belgium, France, Germany and Italy) see the current research project by T. Risse, M. van den Steeg , V. Rauer and S. Rivet (EUI Florence and FU Berlin).

[31] The EU as a multilevel governance system provides a context for what Heater refers to as 'multiple citizenship': Individuals will increasingly have multiple sites through which to exercise their obligations and rights and these would include the neighborhood, the associations of civil society, local, regional and federal government and regional bodies such as enhanced the EU (Heater 1999).

[32] It is in this sense that I understand the revolutionary credo of Frantz Fanon (1967: 199): "National consciousness, which is not nationalism, is the only thing which will give us an

to the different accounts given and stories told by others, and by recounting their own narratives in exchange, the participants in a European (constitutional) public dialogue come to see their discourses and histories as woven together from a multiplicity of "voices". This vision of a European culture could help to foster social integration by forging new transnational communities of political action founded upon the assumption of the inalienable right of individuals to choose to participate in public arenas, irrespective of nation or culture.

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international dimension". The ambivalent, *inter*cultural and thus anti-nationalist nation-space becomes the arena for a new *inter*national culture.

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Chapter 2

Discursive Processes in the European Institutional System

Tanja Hitzel–Cassagnes
Leibniz University Hannover

Introduction

The institutionally induced constitutionalisation of the European polity is problematic in several aspects – in terms of direct democratic participation and in terms of transparency and accountability. With regard to legitimacy, the de-formalised, incremental and creeping constitutionalisation of the European Union seems deficient. But the question is whether these practices and processes of constitutionalisation can be part of a "post-statal" account of constitutionalisation that does not necessarily rely on a unified and personified subject - a people - solving the issues of law and politics in an original constitutive act. The question might be whether there are traces of legitimacy-enhancing mechanisms to be found in the existing institutional structures and practices, in the actual processes of law-making and law-application.

In this article I examine the normative qualities and potentials of the European political system from the angle of a "reflexive constitutionalisation" that focuses on the structures of communication and argumentation between political and legal institutions through reflexive processes of public will formation (see Eriksen and Fossum 2000; Eriksen 2003; Joerges 2002b; Lutz-Bachmann and Bohman 2002; Schmalz-Bruns 2001, 2002 and 2003). In this perspective, constitutionalisation is primarily meant to deal with the institutionalisation of the use of public reason. So the issue is about what

Habermas calls "the force of the better argument". The conceptual challenge, however, is to analytically identify the "force of the better argument" in the structures and practices of communication and to evaluate the effects of these on the individual citizen in terms of inclusion and participation. In this article I rely on the notion of discourse theory as a normative political theory of social interaction and communication, and I seek to demonstrate the analytical and practical merits of this theory.

In order to do this I develop a conceptual and analytic scheme to describe processes of communication on the base of "discourse ethics". Starting from the premises of discourse-theoretical conceptualisations of political processes, of democracy and law respectively, communication is introduced in normative terms and transformed to the level of operationalisation and empirical application. Accordingly, the aim is to apply a specific theoretical account of the normativity of processes of "constitutionalisation" to empirical facts. I do this in the article by presenting a concrete case-study. I will describe, explain and evaluate the institutional discourses about the "right of access to information" within the European Union. This is done through an analysis of documents from European institutions presenting positions in the debates on the right of citizens of access to information from the European institutions. The objective is through a concrete case to illustrate how we can identify the normative traits of institutional discourses in the EU. As will be shown, the right of access to information is internally linked not only to issues pertaining to individual rights in the European Union and to issues of the standing of the individual right holder but also to the broader issues of democratic European citizenship. Insofar the discourses about the rights of access to information as well as the concrete design of these rights is a constitutional issue *par excellence* and can be taken to be of paradigmatic significance for the constitutionalising processes in the European Union. One of the major points to be made will be that, by starting from discourse-ethical assumptions, the *normative* meaning in discursive interaction can be identified, i.e. modes of arguing can be distinguished from modes of bargaining. Accordingly, the operational scheme serves to draw conclusions about the normativity of the "structures" of communication.

In order to present and argue for an analytic scheme exploring institutional discourses in the European Union I will proceed in three steps. 1) I discuss the conceptual underpinnings of discourse theory and discourse ethics. This helps to conceptualise normativity, in the way normative traits may be identified in the structural characteristics of institutional discourse. 2) In a second step I show how it is – methodologically and analytically – possible to make the normative qualities and potentials of institutional discourses visible,

on the one hand, and that the effects in terms of enforcing and enhancing democracy and legitimacy are not merely haphazard, accidental and contingent, but structurally induced, on the other hand. 3) Thirdly, I sketch the concrete discourse about the rights of the individual of access to documents and information held by European institutions. I present some material results of the case-study showing that these kind of rights–discourses do not only have constitutional significance, but that they are also part of a broader process of constitutionalisation The primary objective is, however, to display possibilities, potentials and merits of the analytical framework, i.e. of the operational scheme and the indicators and criteria applied. The results of the empirical application are rather short and sketchy, they are meant only to show the feasibility of the operationalisation. The final part of the chapter holds the conclusion.

Conceptual underpinnings
Normativity and regulative ideals in discourse ethics

It is quite trivial to assume that normativity is, in theory and practice, relevant. Less trivial, however, is the task to specify and explain the different meanings and dimensions of normativity. And quite demanding is the challenge to capture normativity at the conceptual and analytic level and to identify as well as to evaluate normativity in form and content *in* social contexts. The operational scheme pursued here relies heavily on an assumption: Normativity is embedded in the "grammar of social interaction" in such a way that its origin is to be found in the intersubjective structure of social interaction. The normative meanings that are to be recognised and effectuated in processes of communication can be traced back to the very effects of the normative structures of social interaction itself. The consequence is that, in order to identify normative meanings and their effects a "structural analysis" of social communication is needed. If norms and values are part of the reality of social relations,[1] the implication is, in very general terms, that the identification of such phenomena and the explication of their genesis poses analytic questions of the relationship between normative and empirical theory – especially because "social meaning" is always in some way linked to claims of validity. In a way this is the background for the dilemmas of any political theory trying to translate their terminological and conceptual intuitions and premises into analytical tools for conceptually to capture normativity as a phenomenon of social meaning and relevance. One way of dealing with these questions is to take normative political (democratic) theory as a heuristic device in such way that it can serve as hypothetic assumptions for analysing processed of communication (Peters 2000: 290), or better - as hypothesises for the

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[1] See Habermas 1991, 1992, 1995; Wingert and Günther 2001; and esp. Peters 2000: 277ff.

reconstruction of the structure of practices of justification. So the assertion that "norms matter" is, methodologically not a premise but rather a hypothesis to reveal and expose the "normative structure" of communicative interaction.

Distinguishing normativity in the "structures of communication" implies that normativity is identified and observed "indirectly". The normative structure of communication is decisive for the emergence of normative meaning. Having said this, one of the most pressing problems of discourse ethics then seems to be located in adequately clarifying and refining the status of idealisations and their methodological, conceptual and analytic function. What, for instance, is the concrete sense and significance of formal "transcendental conditions", "hypothetic presumptions" or "normative presuppositions"? Is it at all possible, and if yes, then how, to figure out the methodological relevance of "idealisations" with regard to factual phenomena, structures and processes? The fact that normative principles serve as counterfactual and hypothetical idealisations has led to widespread scepticism about the analytic viability and feasibility of discourse ethics. Altogether, it seems to be rather problematic to identify structures, processes and institutions that realise the conditions and contexts of ideal discourses (like the "normative" requirements of transparency and publicity of processes, non-discrimination, no temporal and social restrictions, full inclusion and participation and so on.). The question then is how and under which circumstances we can derive an "analytic" theory open for empirical application. (see Peters 2001; Saretzki 1996a, 1996b, 1998a and 1998b). A starting point is to notice that one of the functions of idealisations is to identify *structural characteristics* – of discourses, of arguing, of processes of persuasion etc. – that serve to indirectly "observe" normativity, discursiveness and rationality.

In that way the heuristic value of normative theory can be demonstrated: As a heuristic device normative theory enables a methodological shift towards focussing on structural properties. So discourse-analyses should focus on the semantic level of "speech-acts" in order to explicate and explain discursivity and its structural characteristics. If we take hypothetical reconstructions of an ideal process of argumentation as a kind of transcendental exposition of the meaning and the sense of argumentation – a kind of transcendental plausibility-check – it is to unfold rationality and normativity immanently, i.e. by way of internally reflecting upon the "language-games" and reconstructing its normative properties and characteristics[2]. This implies that normative

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2 See esp. Brandom 2000 who gives an extensive overview over contemporary debates in philosophy of language with regard to the named questions. See also Searle 1971, 1989, 1997.

properties are inherent in the use of language, i.e. in the very process of communicative interaction itself (see Habermas 1995, 1999 and 2001). Habermas argues for this notion by demonstrating the internal relation between truth and validity (see Habermas 1981, 1983, 1984a and 1984b). Meaning and truth is not substantially but procedurally defined as the result of a consensus. This core characteristic of discourse-ethics is very well grasped by Wellmer (1992: 19) when he asserts that Habermas' basic idea is a pragmatic generalisation of an internal relation between meaning and validity: We do understand a speech-act by knowing why it is acceptable. The assumption that speech-acts comprise pragmatic suppositions (that are to be hypothetically reconstructed) leads to the premise that, whenever a speaker utters/performs a speech-act he at the same time raises a claim of validity. Validity claims are pragmatic preconditions in order to make sense of any speech act[3]. On this basis it becomes possible to reconstruct "ideal speech" and "ideal communication" as regulative devices. Consequently, idealisations of communication can be derived through an examination of theoretically generated validity-claims with regard to processes of argumentation as processes of justified, rational processes of will-formation. In normative terms it follows that only those processes are justified and legitimate that institutionalise procedures of argumentation and justification (Habermas 1992: 563). In other words: communication-processes must rely on a reciprocal game of reason-demanding and reason-giving. The same motive can be uncovered regarding discourses in procedural perspective. The assumption is that a discourse can be explicated as the anticipation of a process that is practiced and reconstructed *in* the very process. That means that the reconstruction of presuppositions and normative premises is itself a procedural proposal to examine, justify and validate hypothetical claims. Presuppositions in a formal and pragmatic sense are drawn from general pre-conditions of argumentation - they are derived as reflections of communicative social interaction. The contention that everybody who seriously wants to argue has to let himself in for (or has to be committed to) the counterfactual idealising principles and premises of a normatively embedded form of communication, has transcendental status. That is to say, contentions like this one follow a *transcendental* logic of unfolding the communicative conditions of processes of argumentation. This, however, implies that the named conditions are conceptualised from an internal perspective, that they are not figured out as

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3 In a transcendental mode of reasoning the necessity of validity-claims is demonstrated by pointing out the performative self-contradictions that occur whenever a validity-claim is not maintained (in a way of: I argue that X and emphasise at the same time that X is wrong, for instance). The performative self-contradiction represents the formal and semantic aspect of the validity-claim – as such the conceptual reasoning is formal, or procedural in a way, because the normative criteria are the result of a reconstructive process.

"objective" criteria deduced and applied from an external standpoint or observer's perspective. To formulate conditions of possibility and realisation eminently relies on the *perspective of the participants* which means that they are not imposed heteronomously from an external perspective.

Communication as Arguing or Bargaining?

Apart from these basic conceptual and epistemological questions there are a couple of derivative problems regarding conceptual and methodological matters. The most crucial problem surely is the distinction of discourse as a process of arguing from other forms, modes and rationalities of communication and interaction, i.e. to empirically distinguish between strategic and non-strategic uses of arguments in communication. At this point I just want to make some short remarks about the recent debates on "arguing" and "bargaining" as distinct modes of communication or (in analogy) on arguing and bargaining as distinct forms of action and distinct forms of actor-related rationalities (strategic action vs. communicative action for instance). At the heart of the debate[4] are different attempts to differentiate communicative orientations, modes and rationalities which allow for juxtaposing the language-games of arguing and bargaining: A language-game in which the language of a rational search for truth and rightness (Saretzki 1996a: 20) vs. a language-game in which the language of power and bargaining (ibid.) is predominant and constitutive for the process of communication, its structure and its results. Precursory in these debates was the work of Jon Elster and his criterial differentiation between arguing and bargaining as modes of communication in three areas:

1) Differentiation according to the *claims* put forward by an actor (validity-claim in case of arguing vs. credibility-claims in case of bargaining);

2) Differentiation along the *criteria* relevant to examine the different claims (consistency and impartiality on the one hand vs. threats, promises and outside options on the other hand);

3) Differentiation according to the aims and ends an actor tries to achieve (either to convince and persuade the other to change beliefs or to force an opponent to accept a claim).

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[4] For an overview see Elster 1986; Jørgensen 1997; Risse 2000; see also Gehring 1996; Phillips and Hardy 2002.

In Elster's words it reads like this:

> To argue is to engage in communication for the purpose of persuading an opponent, i.e. to make the other change beliefs about factual or normative matters. In such discussions, the only thing that is supposed to count is "the power of the better argument" … The factual or normative statements asserted in a process of arguing are made with a claim to being valid … To bargain is to engage in communication for the purpose of forcing or inducing the opponent to accept one's claim. To achieve this end, bargainers rely on threats and promises … Bargaining power does not derive from the "power of the better argument", but from material resources
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> <div align="right">Elster 1991: 2</div>

This is not the place to review the debate in detail or to describe all the diverse approaches and attempts to reconcile the "paradigms". In order to clarify the profile of my conceptualisation of discourses I would just like to hint at some theoretical deficits that especially arise within a framework of rational–choice theory. *Firstly*, it is not quite obvious whether arguing is at all captured as a distinct mode of communication. Because, granted that the mere occurrence of discursivity is explained by "external" and "contextual" conditions, arguing can only be a derivative, dependent mode of communication. When actors, so to speak, *choose* arguing or discursivity depending on the concrete "bargaining"-situation as public, transparent and inclusionary for example, or according to dilemmatic situations or "game"-structures, arguing is plainly tossed about by the actors and at the mere glance of their dispositions. If the original communicative and practical disposition/orientation of actors is explained in terms of "self–interest", and if such an understanding of actors is the premise of the theoretical design, then arguing can no longer be conceptualised as an equivalent mode of communication relying on a distinct logic. The *second* deficit is a result of the first one. At the terminological level there are quite some discrepancies and biases in the analytic frames, in particular with regard to specifications and contextualisation. Quite often it is not clear which of the conditions are meant to be an integral part of the definition itself and which are just relevant for specifying the context: the institutional and procedural setting, or rules of participation and inclusion, or the concrete constellation of actors, conflicts, subject etc. In this context it is likewise doubtful whether at all the logic and the rationality of discourse can be identified. The *third* problem is a lack of specification: It is not made explicit whether the differentiation between arguing and bargaining is one of actor–rationality or of process–rationality.

Analytical frames are frequently quite ambiguous in this respect, so that it is not obvious whether the crucial characteristics relate to the level of actors or to the level of structures. The *fourth* and decisive deficit is, however, that the processual character or dimension of discourses is neglected. A point to illustrate this negligence is the analytic preoccupation with the question of *whether* actors change their views and their beliefs, whether they are ready to dispose of their views and beliefs in communication and interaction with others. In contrast, the emphasis should not be on actors' dispositions and on results but on the process (see also Chalmers 2003; Neyer 2002; Eriksen and Weigård 1997).

When we (as shown above) understand discourses as *processes of mutual understanding*[5] then the conceptualisation also centres around the notion of validity. Validity, however, and that should not be neglected, is necessarily dependent on justification – on a process of "reason-giving and reason-taking" in order to reach mutual acceptance and recognition of the validity-claims. This is so because a speaker can reply to a validity-claim only insofar as this claim is justified with reasons. Accordingly, validity-claims are intrinsically linked to a set of potential reasons: The willingness to give reasons for upholding a validity-claim and the possibility to reply and accept the claim are interrelated. Hence, a social process of mutual justification may be qualified as a reciprocity of firstly validity-claims, secondly reply and acceptance and thirdly giving and taking reasons. As such, arguing is a dialogic and recursive process. It is a self-reflexive process of intersubjective justification. In other words: the principle of justification can be justified through the recursive

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[5] One crucial point regarding discourse as processes of mutual understanding is that, unlike processes of bargaining, processes of argumentation entail social relevant coordination and cooperation. The reason is that mutual understanding or consensus is reached because participants can take a recourse to a shared set of possible reasons and justifications (see Habermas 1977: 580). Methodologically, this thought makes a difference, because conceptualising discourse implies at the same time to reconstruct and specify the conditions of "mutual understanding" (see above) entailing coordination and cooperation. Models of "strategic action" content themselves to explicating the rules for an individually successful practice. In the mode of bargaining, i.e. in the mode of a consequentialist language-game, communication fails to generate mechanisms of coordination and cooperation, because the "telos" of mutual understanding is not constitutive for that sort of game. Discursive processes, on the other hand, generate these mechanisms exactly because mutual understanding and consensus is reached, and only reached by the recognition and acceptance of "justified" validity-claims. Accordingly, the characteristics and criteria that determine the discourse are different from those that determine processes of bargaining. In the latter bargaining-power, material resources and exit-options are decisive, recourse to rationally acceptable reasons is not constitutive for the process, and good and "justified" reasons are not "privileged" (see Habermas 1977: 574). Discursive communication is structured by argumentative power, by the availability of "good" reasons, or more explicit: exposing reasons to justify views and beliefs is the motor of the process.

reconstruction of its validity by reflecting upon the conditions necessary to fulfil the claim. What follows is that communicative "*rationality*" separates the language-games and indicates when a process of communication is arguing. The rationality to be found in discourses is the logic of a reflexive process of justification based on reason-giving and reason-taking. To shed light on this point let me resume: The basic assumption is that there is an internal link between the sense and status of validity-claims and their justification in a process of reason-giving and reason-taking. The main implication is twofold:

1) The notion of mutual understanding on the base of "rational acceptance" is connected to a specific notion of the appropriate mode of communication (or the appropriate language-game).

2) The rationality of communication can not be put down to instrumental, consequential or strategic rationality.

To determine what is a "rational" mode of dealing with validity-claims is possible only by recovering the relation between validity-claims and the possibility of justifying them (see above). Habermas himself at this point refers to "communicative rationality" in order to differentiate the form of rationality implied in intersubjective processes of validation – that is, to raise, accept, justify, deny or criticise validity-claims – on the one hand from instrumental or strategic rationality on the other. The aim of reaching "mutual understanding" can only suggest that any speech act compels itself to be rationally justifiable and acceptable. As Wellmer notes, this is the grammatical sense and meaning of communicating (Wellmer 1992: 21; see also Habermas 1995; Rawls 1997; Estlund 1997; Bohman and Rehg 1997; Schmalz-Bruns 1995).

The reconstruction of institutional discourses

The operational scheme

The operational scheme presented in this part is meant to be of a general nature, although it is developed with reference to the special case at hand. The next part focuses on the concrete findings in the case analysis. To capture processes of argumentation and justification in institutional discourses, we proceed in two steps: a) in a punctual examination of particular documents we have analysed the structure of the reasoning and justification on the one hand and the structure of the concrete normative claim on the other hand (see the operational scheme below); b) the normative effects - the transformations of the arguments, the extension of rights, inclusionary achievements etc. - were analysed by reconstructing the discursive process. For that sake we have recorded mutual references, responses, citations and replies. So normative dynamics and transformations were identified in cross-sectioning.

Table 1

I. Formal Criteria to analyse the structures of argumentation and justification

1. Level of Conflict
    Foundation / Application
2. Sources and References
    2.1. Material (*claims*): Value, Principle, Right, procedural and organisational rights/guarantees
    2.2. Formal
        2.2.1. Political Declarations
            2.2.1.1. National/Intergovernmental
            2.2.1.2. Supranational
            2.2.1.3. Others
        2.2.2. Positive Law
            2.2.2.1. Primary Law
            2.2.2.2. Secondary Law
            2.2.2.3. Others
        2.2.3. Common Law
            2.2.3.1. Custom
            2.2.3.2. Precedents
                2.2.3.2.1. National Courts
                2.2.3.2.2. European Courts
                    2.2.3.2.2.1. Judges
                    2.2.3.2.2.2. Advocate General
                2.2.3.2.3. Trans- and International Courts
            2.2.3.3. European Common Principles of Law
        2.2.4. International Courts
        2.2.5. Higher Law
            2.2.5.1. Common Principles of Law
            2.2.5.2. Universal Law / Law of Reason
3. Argumentative Reasoning / Method
    3.1. General
        3.1.1. Background-Understanding Regarding the Status of the Individual
        3.1.2. Degree of Inclusion
        3.1.3. Systematic (Degree)
            3.1.3.1. Coherence
            3.1.3.2. Consistency
        3.1.4. Concreteness (Degree)
            3.1.4.1. Institutional/Procedural
            3.1.4.2. Material
        3.1.5. Degree of Explication
            3.1.5.1. Institutional/Procedural
            3.1.5.2. Material
    3.2. Concrete (3.2.1.1. and 3.2.1.2. only in case of codified Law)
        3.2.1. Degree of Methodological Explication
        3.2.2. Degree of Conceptual Explication
        3.2.3. Multi-methodological Yes/No
            3.2.3.1. Meaning
            3.2.3.2. Historic – Genetic
                3.2.3.1.1. Genesis/Codification
                3.2.3.1.2. Application
            3.2.3.3. Systematic

Table 2
II. Formal Criteria to analyse the structure of the normative claims

In order to draw conclusions about the normative status of the contributions the operational scheme is divided into two broad categories. The first one puts down indicators and criteria to classify the formal structure of the arguments laid down and to qualify the normative status of the reasoning. This is carried out by identifying the different methods and kinds of reasoning and of justifying a claim and by identifying their systematic and formal qualities. Centre of attention are the structures of the reasoning, and in this way "juridicial" forms of argumentation and justification indicate the normative qualities of the reasoning relating to legal foundations of a claim, invoking normative principles, systematic and methodological interpretation

of a normative claim, weighing conflicting claims and so on (*I.: Formal Criteria to Analyse the Structure of Argumentation and Justification*). In analogy to the first one, the second category classifies the normative status of the concrete normative claims put forth with the contributions. In the second category we captured the material subject matter of the normative claim that has beforehand been analysed with regard to its reasoning-structures. Although, to some extent, the structure and especially the normative quality and status of argumentation and justification (i.e. the kind of reasoning) determines the "substance" and the normative status of the concrete claim (i.e. the concrete individual right), we still take it to be profitable to apply the second category, because it adopts the analytic criteria in a slight shift of focal point towards the content of the rights. So the fact that we operate twice with similar indicators and criteria is not mere redundancy but equivalently a supplement to identify normativity at the semantic level. In order to identify, explicate and unfold the transformation of the "right of access to information" we have differentiated between the material qualities of the claim, qualifying conditions, restrictions and exceptions (*II.: Formal Criteria to Analyse the Structures of the Normative Claim*). Let me now shortly comment the operational scheme in its details (see Tables 1 and 2).

Ad I. Structure of Argumentation and Justification

In order to identify the structures of argumentation and justification we have asked *four sorts* of questions, i.e. questions about the normative concept, the normative references, the argumentative depth and about restrictions and qualifications. *Firstly,* we have asked whether the contribution at hand is concerned with a dispute of law-making or of law-application. That is, we have asked whether foundational issues of justifying the generation of an individual right or whether questions of application, specification and implementation of an acknowledged and already established right, were at stake (*I.1.: Level of Conflict, Foundation vs. Application*). At the same time we have questioned the normative concept that frames and structures the claim to access to information and documents. This criterion is supposed to allow conclusions about the sphere and depth of the normative claim according to whether it is described as a value, a principle, an individual right or an individual right embodying procedural and institutional guarantees (objective right) (*I.2.1.: Material Claim*). These different concepts can be read in hierarchical order insofar as values, in general, have the least and rights the most obvious direct effects on the individual's standing and status. In general, a value is at stake when it is a more or less vague formulation of a normative claim or demand and its optimisation, i.e. a "telos". A principle in the sense of a general and abstract principle of law, by contrast, implies a higher degree of obligation, especially with regard to concrete duties of implementation and

application, i.e. the deontological character is more explicit (see Habermas 1992; Alexy 1986, 1992, 1993, 1995; and Bogdandy 2003). Rights, again, are meant to be individual basic rights that are enforceable. In the case of procedural and organisational rights, the individual right entails certain procedural and organisational rights and guarantees and certain institutional obligations to effectively enforce and implement the right as well. In this context we start form the premise that in the case a claim is to be located at the "highest" level (i.e. an individual right with procedural guarantees) it is necessarily implied that is has gone through the different stages (from value over principle to right), gaining in depth and normative "densification". On the one hand, the estimation is that principles and deontological claims rather aim at designing and enforcing rights and procedural guarantees – unlike values that aim much more at designing objective rights and "legal institutes". On the other hand, the identification of a discussion either about values, principles or rights can tell us something about the openness of the discourse. So the assumption is that discourses about values and principles are more flexible and dynamic – open and innovative – than discourses about individual rights or concrete guarantees. Still it is likely that disputes about values or principles will proceed in a way that they entail disputes about rights and procedures.

In order to specify the normative concept, we examined the background-understanding concerning the status of the individual (or the legal subject) with regard to the European Union as a public authority (*I.3.1.1.: Background-Understanding regarding the status of the individual*). The assumption is that the background-understanding makes quite a difference to the concept and content of an individual right and accordingly to the status of the individual rights-holder. Usually this kind of abstract background is supplied by (implicit or explicit) constitutional philosophies and constitutional theories. They prejudge and shape the sphere of rights insofar as they lay down aims and functions of a political community and public authority and insofar as they fix the kind of relation between the political unit and the individual. Although it was not to be expected that the background-understanding is explicitly stated and explained (nor that it is explained in theoretically consistent and systematic ways) we deduced the status that was attributed to the European Union as a public authority. Accordingly, we differentiated and ranked the notions of the European Union as an economic, a legal, political and politico–social (*Solidargemeinschaft*) community. This conceptual ranking would be equivalent to the different perceptions of the individual as an economic, a legal or political subject.

By identifying the degree of inclusion (*I.3.1.2.: Degree of inclusion*) we wanted to specify whether a legal claim is conceptualised as universally valid or whether it is qualified. Qualifications and restrictions of the validity-base more or less indicate excluding effects (either with regard to the legal subjects or with regard to legal subjectivity). *Secondly,* we formally specified the normative references and sources that were invoked to justify a normative claim. In this context we recorded "soft law" as well as "hard law", i.e. positive codified law as well as principles of law and principles of justice. So, in the category "*formal sources and references*" (*I.2.2.*) we differentiated the bases that were taken to be authoritative and valid bases to enforce a normative claim. We recorded *political declarations* (*I.2.2.1.*) at the national and intergovernmental level as well as at the supranational level, codified law (*I.2.2.2.: positive law*), i.e. primary and secondary law and *common law*-sources (*I.2.2.3.*), esp. *custom* (*I.2.3.3.1.*), case-law (*I.2.2.3.2.: precedents)* by national, European and International Courts, common principles of law and universal law (*I.2.2.5: Higher Law*).

The *third* sort of questions was dealing with the argumentative depth (*I.3.: Argumentative Reasoning/Method*). In order to identify the normative status of the argumentation we analysed the structure of the reasoning, the justification and the interpretation of a normative claim. In this context, on the one hand, we classified formal and systematic aspects of the reasoning along *general methodical specifications* (*I.3.1.*) – with regard to the degree of systematic reasoning by qualifying coherence and consistency (*I.3.1.3.*), with regard to depth and density of the reasoning by regardning the *concreteness* (*I.3.1.4.*) and the level of *explication* and specification (*I.3.1.5.*), both in procedural and in material terms, and with regard to the degree of methodological and terminological explication (*I.3.2.1.: Degree of methodological Explication and I.3.2.2.: Degree of Conceptual Explication*). On the other hand we analysed the concrete methodical way (*I.3.2.*) of justifying and interpreting the meaning, function and substance of the normative claim in order to specify the pattern of reasoning (*I.3.2.3.*). In this context the methodological differentiation of legal reasoning served as a heuristic tool to identify different ways of reasoning. The reason is twofold, systematic and hypothetic. In a systematic perspective we can say that, in order to justify a normative claim (esp. when individual right–claims are at stake) it is necessary to systematically and methodically interpret that claim in the way of rationalising it and rendering it acceptable to others. To justify a normative claim is to justify its normative qualities and sources. Judicial reasoning or "Juridification" is one way of rationalising and justifying a normative claim and as such a matter of normativity. Hypothetically, the assumption was that, in principle, it should be possible to identify different approaches to interpretation and justification

in non-legal texts, too (an assumption that was finally confirmed). Finally, we classified the different approaches in the following way: The first method of explicating the sense and the substance of a right is to refer to the terminological and semantic properties, or the wording (this kind of interpretation is foremost related to positive and codified law) (*I.3.2.3.1.*: Meaning). Another point of reference can be the genesis (*I.3.2.3.2. historic - genetic*) of a right, its institutionalisation and application, i.e. the history of positive codification (*I.3.2.3.1.1.*) or/and the history of practices of enforcement and application (*I.3.2.3.1.2.*). A third compass reading is the systematic embedding of a legal claim in a legal order or hierarchy of norms and in a corpus of rights (*I.3.2.3.3.*). The forth way of interpretation is oriented towards the teleological meaning of a normative claim, its ends, aims and functions within a broader framework of rights, principles or values (*I.3.2.3.4.*). The final possibility of interpreting rights that is relevant in this context is comparative reasoning and justification – either with regard to different legal systems and their legal practices (*I.3.2.3.6.*) or with regard to different legal spheres, i.e. substantial areas of law, rights and principles (*I.3.2.3.6.*) meant to be of similar structure and taken as analogies.

So far, we have regarded formal and systematic aspects of "juridicial" structures of argumentation. In contrast, the *fourth* set of questions is concerned with structures of "non-juridicial" reasoning. In a kind of negative-check we wanted to disclose functional and substantial restrictions, deformalisations and constraints that influence the "normative status" of the justification of a claim (*I.4.*: Restrictions)[6]. For that reason we enquired in a first grip whether collisions of "goods" or principles were at stake (*I.4.1.*: *Collision of principles/norms/goods*). The presumption was that weighing conflicting goods and claims can have confining and restricting effects on a right. Furthermore, we have identified "topic" structures of reasoning emphasising concrete (and in a rather ad-hoc-fashion) problem-solving aspects without embedding the justification in a broader formal and systematic frame (*I.4.2.*: *Problem-oriented considerations*). Another way of evaluation having potentially confining and deformalising effects is the reference to "appropriateness" or "equity" (most of the time invoked in order to justify exceptions) (*I.4.3.*: *Equity*). The last way of reasoning that is not "judicial" in a narrower sense (from the start at least) is dealing with functional or pragmatic considerations on the one hand and with specific utilitarian considerations (cost-profit-calculations) on the other (*I.4.4.*: *Consequences*).

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[6] To refer to "non-juridicial" patterns of justification can very well be inspired by a "juridicial" logic – especially in cases of unsolvable collisions and conflicting claims, or in case of irresolvable, incommensurable conflicts and collisions, so that reference to other "normative" standards (although their normative status is mostly contested in those cases) becomes necessary.

Ad II. The structure of the normative claim

The second category employing analogue criteria is meant to reveal the normative structure of the concrete normative claim. In this category we capture the material properties of what has formerly been analysed in its argumentative structure by looking at the "kind" of the claim, at qualifications and at restrictions. *First,* we specified the concrete notion of the normative claim (*II.1.: Kind of normative claim*). That was done by identifying the degree of legal density (*II.1.1.: Legal density/depth*), by classifying whether the claim is conceptualised as a value, a principle of law or as an individual basic rights (see also *I.2.1.*). In case rights were at stake, we had to decide whether the right in question was figured out as an individual or as a collective right (with regard to the right of standing) (*II.1.2.*), and whether it was meant to entail subjective or objective legal entitlements (*II.1.3.*). In the first case we differentiated the forms of legal recognition according to legal standing and "subjectivity": either individual or collective (i.e. standing of political, economic, social groups or organisations, institutions, collective actors). In the latter case the differentiation is analogue to that one between individual right and "legal institutes" (objective guarantees for instance). We qualified a right an objective right when certain guarantees were essentially attached to it (see also *I.2.1.*).

Second, we have identified the range and scope of the right in question by specifying the status of the legal subject that is attributed to the legal entitlements. The according differentiation relies on Jellinek's (1919) conceptual hierarchy of "status negativus", "status positivus", "status activus" und "status activus processualis" (*II.1.4.: Specification*). Just to sketch the concept: A "status negativus" is constituted when basic individual rights are conceptualised as negative rights and liberties, as a right against intrusion and intervention (by the state for instance). A "status positivus" is constituted primarily in terms of equality and the idea of equal share and contribution. We have termed a right constituting a "status positivus" whenever (direct and indirect) public contributive and redistributive measures were invoked in order to guarantee a right. "Status activus" is constituted by rights of participation, freedom is therefore explained in positive terms. Apart form that, "status activus poceduralis" includes organisational and procedural entitlements and guarantees of participation. Jellinek's concept is well suited not only to allow for insights into the quality of "constitutional" guarantees, but also into the quality of the relation between legal subject and the political unit and authority. Another dimension that allows drawing conclusions about the range and scope of a right are spill-over effects or third-party effects. Spill-over effects can be regarded in terms of substantial areas of rights, in terms of the normative hierarchy and in terms of addressees and their duties. In order

to indicate the range and scope especially of entitlements third-party effects were broadly interpreted (*II.1.5.*).

Another criteria is dealing with the conditions of the legal entitlements and enforceability, i.e. with the warranty-base of a right that enables to qualify the effectiveness of rights-protection. In this context we differentiated criteria that determine who belongs to a particular group of rights-holders – as such it tells us something about the degree of inclusion (*II.2.: Qualifications*): The highest degree of inclusion is reached when a right is termed universally valid without qualification (a human right) (*II.2.1.*). Qualifications regarding the question of who is a right-holder (*II.2.2.: Base*) were classified along the following criteria of "belonging to a group": The class "*Public Community*" (*II.2.2.1.*) includes citizen and denizen as well. In the class "*Mandate*" (*II.2.2.2.*) belonging is determined according to predefined status, function, agency and administration. In the class "*Function*" belonging is determined by subject-dependent functional and utilitarian selection (*II.2.2.3.*). Finally belonging can be termed with regard to "*Concern*" (*II.2.2.4.1.*), either in the way, that everybody who claims to be concerned is eligible (*II.2.2.4.*), or in the way that only those persons "objectively" concerned hold the right (*II.2.2.4.2.*), i.e. concern relies on specific reasons and intersubjective acceptance (see also Schmitter 2000).

Third, we have enquired about the different modes of constraining and restricting the legal entitlements and guarantees attached to a normative claim (*II.3.: Restrictions*). In this context we have differentiated the ways of justifying the restrictions: on account of a normative order or hierarchy between norms and principles (in case of conflict and collision) (*II.3.1.: Hierarchy*); by determining the core of a right, its meanings and effects in order to specify borders of intrusion (*II.3.2.: Core-Content*); or by references to the pre-conditions of entitlements (warranty-base) (*II.3.3.: Base*).

The case at hand: Rights of access to information

I will briefly discuss the institutional discourse about the rights of access to information in the European Union[7]. In very general terms, the aim of the case-study at hand was to identify the normative properties and changes of

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7 The case-study was undertaken in the context of a research-project titled "The Development of Law and Democracy in the European Union – Discourses about Rights in the European institutional system". The conceptualisation of the analytic framework and the operational scheme is also the result of intense discussions and reflections about the criteria and their theoretical adequacy, plausibility, analytic feasibilities and practical applicability between Heidrun Abromeit, Tobias Auberger, Sybille de la Rosa, Oliver Flügel, Daniel Gaus, Tanja Hitzel-Cassagnes, Simone Ruppertz-Rausch und Rainer Schmalz-Bruns.

institutional discourses.[8] For the concrete application one specific area of law was chosen which is well suited to exemplify normative dynamics and transformations in the course of discursive processes on the one hand, and to demonstrate the effects of such dynamics with regard to the legal status of the individual on the other hand: The rights dealing with public access to information in the European Union, or more specifically, the *individual right of access to documents* which are held by Community-institutions. The intention at the outset was to identify the transformations of the institutional discourse, or in the words of our analytic scheme, to get an idea about the transformation of argumentative processes and dynamics of justification. Equally, the focus was on identify the consequences of these transformations for the individual (especially the extension and improvement of the "right of access"). The main interest was to identify effects that strengthen the individual legal subject or "citizen", its standing and status vis-à-vis the European Union as public authority, i.e. to identify inclusionary and participatory effects. In this regard the institutional discourse about the "right of access to information" is a test-case for institutional discourses on individual rights. It paradigmatically enables insights in the process of constitutionalisation and in the "construction" of a "European citizen". According to the theoretical and conceptual design exposed below, the discourses we have observed including the rights "generated" and transformed were interpreted and analysed as "democracy-strengthening and democracy-enhancing" forms of political communication. The hypothesis that law is generated in discourse, in a communicative process of arguing and justification, is the outset of the empirical validation. The material development and transformations of the rights, however, was captured in the course of the investigation by generating concrete hypothesises. By framing the original hypothesis which had to be empirically validated at quite a high level of abstraction, it was much easier to systematically incorporate the theoretical design at the empirical level. In particular, it was less problematic to translate and apply the discourse-ethical premises and assumptions at the empirical level (in form of empirical hypothesises) and to allow operationalisation from the overall conceptual framework. That we do not

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[8] We have carried out the discourse-analysis in form of analysing documents. To look at written documents seemed to be suitable because on the one hand they can be qualified as "speech-acts", as contributions to a discussion, and they allow an analysis of material contents, reasons as well as methods and structures of reasoning. On the other hand, by looking at practices of quoting, citing and reviewing the different contributions the relational and intersubjective dimension, i.e. the discursive relevance is considered, too. Accordingly, we have analysed one-hundred documents (reports and special reports, draft recommendations, recommendations, decisions, judgements, bulletins etc.) of European institutions, i.e. Parliament, Ombudsman, Commission, Council, European Court of Justice and the Court of First Instance.

transcend the conceptual design with the hypothesis "Law is generated in discourse" can be seen when rendering clear the discourse-ethical (formal and procedural) explication of the law. Inclusionary potentials can be identified in communication about rights insofar as the mere terminology or the mere language of rights incorporates normative potentials that are both functional for and constitutive of democracy.

Furthermore it is a second premise of discourse-ethics that the inclusionary procedures can be traced back to a (communicatively generated) "compulsion" or "imperative" that is located at the semantic level. The assumption that discourses entail normative structures of argumentation and justification (which can be described in terms of *juridification*) carries us so far as to formulate the analytic expectation, that discourses embody (successively and incrementally) democratising potentials (see Joerges 2002a, 2002b; Joerges and Neyer 1997): Because in discourses of rights there is a (normative) structural force "to encompass" the rights-holder not just as an object of the law but also as a subject of the law, i.e. as a democratic subject. Argumentation and justification as a meaningful procedure follows certain formal and structural features that are normative compulsions with inclusionary tendencies and effects. In other words: Once you use the language of rights you are caught in that language-game. In the very end, you are pulled into the logic of the law. This kind of "juridification" incorporates normative potentials such as rationalisation and self-reflexivity to be successively enforced in processes of justification; as such they are part of the broader constitutionalising processes within the EU.

The results from the case study reveal significant insights in the process of legal change and development in the EU. In the above I wanted to demonstrate how it was possible to identify and to expose the "normative grammar" of discourses by an analytic conceptualisation and an operational instrument that is inspired by normative discourse-theory of democracy and law. Analysing discourses stands for revealing *how* normative properties constitute processes of argumentation and justification and how this normative structure effects the normative quality of arguments and reasons. By focussing on the *process* the necessary intersubjective and dialogic structure of normativity in social interaction can be considered, and that means: discursivity is captured. Accordingly I tried to display the potentials of an analytic framework and operational scheme designed for a structural and formal analysis of discourses.

With regard to the material results of analysing institutional documents about the "right of access to information" I want to highlight two conclusions. One

of them is related to the working hypothesis that law is generated in discourse and the other one is concerned with the dynamics and the transformations of the discourse. Although presenting some of the results is primarily supposed to illustrate the plausibility of the analytic conceptualisation and the viability and feasibility of the operational instrument. The analysis of the institutional discourses revealed some formal and material characteristics that might be taken to be paradigmatic features of processes of legal change within the European polity – changes that form a constitutive part of the "incremental" and "creeping" constitutionalisation of the European union and changes with important effects on the status, standing and practical abilities of the European rights-holder and citizen.

In support of the hypothesis that law is generated discursively we can point to the fact that the institutions, political as well as legal institutions, referred extensively to each other. There were quite a number of mutual references in reports, recommendations, decisions and judgements, the authors (reciprocally) mentioned and discussed statements, arguments and positions of the other institutions. Mutual references were to be found in all sorts of documents (informal drafts as well as official reports and binding decisions) and were marked as such. Accordingly, it was possible to make disputes between institutions and within different administrative or judicial sections and offices transparent and to reconstruct the lines of discussion and reasoning. Taking this into consideration, it was also possible to expose and describe the process of extending the scope, range and substance of the right of access to information beyond formal (and formalised) law-making procedures, i.e. in the course of the institutional discourse. A particular indicator is surely the frequent consultation of political declarations and sources of soft law in order to justify and sustain a normative claim. The formal references to sources do not only include hard codified law and precedents (binding judge-made law) for instance, but also political and legal contributions without binding effect and common principles of law and comparative sources (I.2.2.[9]). The predominant pattern of justification and reasoning is not "positivist". The dominant mode of justifying normative claims is rather teleological (see below), emphasising the ends to be achieved – for instance transparency and openness, good governance, democracy and participation, inclusion etc. – and trying to systematically incorporate the right in the framework of the legal order (I.3.2). In addition to that, the argumentation and the reasoning was not just considering the law-making context in the sense of positive codification, but far more the history of application, enforcement and implementation which implies that institutional practices were frequently regarded (I.3.2.3.1.2.).

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[9] The following numbers apply to the operational scheme laid out above (Tables 1 and 2).

Most notable is the circumstance that the contributions were *prima facie* and *expressis verbis* dealing with a conflict or a question of application, implementation or specification of the right of access to information. Contrary to the apparent level of conflict the arguments laid down and the reasons invoked were supposed to justify additional claims or significant extensions and re-interpretations of the right. So theoretically and in abstract terms, they disposed of a conflict of application and implementation. Practically, however, regarding the material accounts and concrete assertions, it was much more a "foundational" discourse, generating and justifying normative claims with the effect of extending and transforming the "*status quo*". This is especially indicated by the discussion and introduction of procedural and organisational entitlements and guarantees attached to the individual right as well as by the debates about institutional duties and the changes of institutional organisation and practices (I.2.1.). The practical attempts of concretisation and specification were the "argumentative motor" to broaden the range and scope of the right, to extend its meaning and density and accordingly the procedural guarantees and institutional (organisational and practical) duties. Apart from that, this dynamic had third-party and spill-over effects in several dimensions: The development of complementary rights and institutional duties, derivative rights and procedural guarantees such as reason-giving requirements, other rights of access, enforcement and implementation (see I.3.1.4., I.3.1.5.).

The extension of the right of access to information (in quantitative as well as in qualitative terms) is visible, and the proceeding of the institutional discourse is discernable especially since Maastricht.[10] In the course of the debates there is a general tendency to emphasise, to strengthen and to improve the rights of the individual vis-à-vis the European Union as a public authority or (lately) as a political community. In the debates there was an extension and enlargement of the right on the one hand, and a progress in status with regard to the "hierarchy of norms" on the other hand. Furthermore there was a tendency to interpret the possibilities of constraints more and more restrictively and the grounds of restrictions in an increasingly limited fashion. Likewise, the degree of inclusion and the warranty-base was extended (from citizen to denizen for instance, see I–3.1.2., II–1, II–2.2.). Altogether there is an equivocal propensity to enlarge the area of third-party and spill-over effects with regard to complementary and derivative rights (mostly against the background of interpreting the individual right of access to information as general principle of law), to improve procedures and institutional practice and to increase the density of the right of access to information (see II–1.1).

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[10] However, it is primarily the preamble that was mentioned in the contributions, i.e. a legal text that is not unequivocally judiciable.

Let me turn to another area where transformations were discernable. On the one hand, most of the contributions interpreted the right of access to information in terms of an "absolute individual right" without diminishing its validity (I.4). On the other hand, with regard to qualifying constraints and restrictions (most often in concrete questions of conflict or conflicting interests between individual plaintiffs and institutions) there was a clear shift in the way of justifying them. In particular there was a shift from functional and consequential reasoning toward principled "normative" reasoning. Unlike notions of the effective functioning of an institution and efficiency of public administration for instance the emphasis tended to evaluate and weigh the right of access to information according to normative matters in a narrower sense, i.e. in terms of collision of principles and norms or in terms of normative hierarchy and so on. So, in fact, this development indicates very much the "juridification" of the discourse. Furthermore, and that is a point which is relevant both in the context of the *discursive* generation and transformation of law and in the context of the extensions of rights – there is a modification in the notion of the European Union as public authority. In this context we have identified a change of concept from regarding the European Union as a economic and legal community towards regarding it much more as a political community (a shift, however, that occurred before the appearance in the European Treaties and before the intergovernmental discussions about incorporating the notion of a political community in the Treaties).

Conclusion: Analytic Implications of Discourse Theory

After elaborating the conceptual possibilities of normative theory in quite abstract terms, I would now like to summarise the analytic consequences of conceptualising discourse as a process of mutual understanding, rational consensus building and justification. As noted, the assumption is that discourses are structured by the "normative imperatives" of argumentative justification. The notion of a "normative imperative" suggests that only those reasons are intersubjectively recognisable and rationally acceptable which fulfil certain criteria determining what is a "good" reason. Accordingly, the argument runs like this: If it is possible to capture the normative imperatives at the semantic level analytically, it should tell us a lot about the normative properties of communication and vice versa. So the guess is that we can identify the normative qualities of communication in form and content indirectly. I want to explain the concrete implications by way of drawing three conclusions 1. Discourse-analysis should be a structural analysis, 2. it should be a formal analysis and 3. it should be a process-analysis.

1. The aim of analysing discourses is to identify the normative properties of discursive interaction – these properties are generated and effectuated communicatively. Methodologically we can do this by uncovering the normative structures of argumentation and justification. Focussing on communication as such, on the "free flow of communication" so to speak, does not depend anymore on a perspective that centres around actors. Analysing discourse becomes possible and feasible by analysing "speech–acts". Object of the research are the speech–acts as the results of communication (anonymously regarded), not as products of a specific speaker. What is of interest are accordingly the characteristics of speech–acts, and not personal, motivational or intentional aspects of actors and institutions (as concrete performers of speech–acts)[11]. Personal actors in that sense are not anymore the analytic object, just because, in the very end, the object is to identify the formal and structural semantic of communication and not to identify the substantial and motivational semantic. The "problem of personal motivation" can be conceptually avoided exactly because discursivity is not identified in micro–foundational aspects of actors but at the level of the communicative structure. By unfolding structural characteristics of communication we are therefore able to indicate under what conditions actors cannot escape the compulsion to give and take good reasons (see Habermas 1990 and 1991; Schmalz-Bruns 1995; Kuhlmann 1999; Gerhards et al. 1998; Gerhards and Neidhardt 1991; as well as Peters 1997 and 2000, see also below).

2. The exposure of the communicative structure is done by way of a description of speech–acts, whereas the characteristics of speech–acts indicate the normativity of communication. In shifting the focus in that way it is feasible to capture the normative properties of communication by looking at the semantic structure and formal characteristics of speech–acts: normativity is particularly identified in the formal design of arguments. Consequently, the analytic and the operational instrument must supply criteria and indicators to classify and evaluate the normative content of arguments and argumentation. The way this can be done is by analysing the structures of the reasons, the reasoning and the justification that are at the bottom of an argument. Hence,

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[11] There has been done quite some research to operationalise discourses in such a way that, analytically, the focus aims at drawing conclusions from the structures of communication both on the effects of normativity and on normative effects (see e.g. Peters 2000; Villa 1992; Elster 1994 and 1995; Daeale and Neidhardt 1996; Kellner 1990). With this approach a twofold problem can be tackled: firstly the problem that we cannot observe normativity directly as a matter of fact, and secondly the problem of the relevance of the motivational and intentional foundations of the actors involved - that we cannot observe motivations and intentions. The shift of the focus on structure helps avoiding these problems because it now becomes possible to observe normativity by indirect identification which diminishes the status and relevance of actor-related motivational aspects.

the formal design of an argument is decisive for its normative status. What follows is that an adequate and appropriate operational instrument or scheme has to provide rationally acceptable criteria indicating what can count as good reason and reasoning. What can count as good reason is again measured against the background of what can rationally be accepted as justifying normative claims in processes of reaching mutual understanding (see above).

3. In order to analyse the normative properties of discourses, it is not sufficient to regard concrete speech-acts and their formal design as isolated contributions and units. The process-dimension of discourses cannot be neglected. This implies that discourses can adequately be described and evaluated only by analysing argumentative processes and dynamics. So, in fact, it is necessary to unfold the development and transformations of the structural characteristics, i.e. the development and transformations of the reasons and methods of reasoning and justification.

I have shown how a structural examination and evaluation of processes of communication can be carried out. Regarding the institutional discourses about the "right of access to documents" I have exemplified the effects of such discourses in terms of strengthening individual rights in the European Polity. The case-study revealed that formal criteria of argumentation and justification such as non-discrimination (as equal respect and concern) and impartiality (as institutional actors) structured the discursive process and led to inclusionary spill-over-effects for the individual right-holder. This process can hence be interpreted in terms of an enhancement of rationality and legitimacy and, as such, in terms of constitutionalisation.

Insofar as formal "juridical" criteria of argumentation and justification like equal concern and respect, non-discrimination and impartiality for instance structured the discursive process, the institutional discourses contributed to the legitimacy of legal change in terms of (normative) rationalisation and in terms of (indirectly) democratising the "constitution" of the European Union.

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Chapter 3

Towards a Europeanised Public Sphere? Comparing Political Actors and the Media in Germany

Ruud Koopmans and Barbara Pfetsch
Vrije Universiteit Amsterdam and Universität Hohenheim

Introduction

Against the background of the alleged democratic deficit of the European Union, scholars have begun to recognise that successful European integration requires more than the implementation of efficient institutions and the harmonisation of national and European policy making. It also involves processes of communication and the emergence of a public sphere that allows citizens to get involved in public discourse about European politics. In the discussion on the democratic deficit, it is widely acknowledged that European integration from above must be accompanied by a Europeanisation of public communication in order to overcome the EU's lack of legitimacy and popular involvement. The request for public communication as an indispensable prerequisite for the democratisation of Europe has triggered a vivid scholarly debate on the nature of such a European public sphere and the conditions of its emergence (Neidhardt et al. 2000). While the German debate is inspired by quite controversial views on whether a potentially emerging European public sphere must be conceptualised along the lines of a representative liberal model of public sphere or follow the notion of a deliberative public sphere (Eder et al. 1998), qualified empirical evidence is still rare. Theorists and empirical researchers, however, seem to agree that it is the mass media that constitute the main forum for the public representation of such a European public sphere. Moreover, since for various reasons – such

as language, cultural heterogeneity, and the national make-up of media systems – the emergence of a transnational European media system seems rather unrealistic, most studies refer to a model of a European public sphere in terms of a Europeanisation of national public spheres. It is not surprising therefore, that the ambitions of projects that aim at identifying a potentially emerging European public sphere focus on the mass media as prime object of study and try to establish the prominence of European issues and actors in media coverage over time (Gerhards 2000, Eilders and Voltmer 2003), or across countries (Peter and de Vreese 2003, Kevin 2003, Eder and Trenz 2000).

The empirical findings of the few studies are rather sobering compared to the enthusiastic expectations and speculations that European issues and actors might stand out as visible and ever growing components of national public spheres. Thus, Gerhards (2000, 2002) maintains that the Europeanisation of the public sphere is lagging far behind the well-documented tendencies of economic and political integration. Interestingly enough, the studies of media coverage – explicitly or implicitly – share the assumption that the Europeanisation of national public spheres is in the interest of the majority of political and economic elites in EU member states, whereas the media for various reasons appear as one of the prime obstacles to Europeanised political communication. It is argued that the logic of the media and in particular the rationales of news making – for instance the professional news values as selection criteria of messages, the goal of attracting large national audiences by personalised, conflictive and event-driven coverage and their disinterest in administrative, policy-driven information – result in a lack of interest in European issues and actors, and eventually keep public political debate within the boundaries of the nation state (Gerhards 1992, 1993). Thus, the media are held responsible for the resilience of largely nationally focused public spheres.

The theoretical assumptions these studies make about the role of the media cannot be taken for granted, and the empirical approaches that are used to test them are not always appropriate. If only the news coverage is analysed, it may be argued that the low representation of European issues and actors is not necessarily an indication of a reluctance on the side of the media to sponsor European politics. News coverage is strongly bound to the information sources and news-generating events, which in turn depend on the public strategies of political and economic elites, and their competition with one another for public visibility, resonance, and legitimacy.[1] Thus, news reports rely to a large degree on the input from the (predominantly national) political elites, who have their own interests and publicity goals. These

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[1] For a theoretical elaboration of the competition for these three scarce resources in the public sphere – which can be conceptualised as "discursive opportunities" – see Koopmans 2004.

interests and aims of national elites are not necessarily served well by emphasising European dimensions of political issues. If studies demonstrate that media coverage largely neglects European politics, the blame must not necessarily lie with the media themselves, but may lie with the information input that is provided by their sources. Since the media as institutions have – in contrast to national political elites – hardly any vested interests in European politics, one might alternatively speculate that they are in favour of a free flow of information across national boundaries. Thus, the media's role as scapegoats for the lack of a European public sphere must be challenged, as long as their specific role in this picture is not more precisely assessed.

According to theories of the public sphere, the mass media are the institutionalised forum of debate, which serves as a central linkage between the public and the institutional structure. In this function, they are conveyors of information about issues and actors according to their professional norms and values. However, the media are not merely serving other actors as a channel of communication, forum for exchange, and medium of self observation of society. The media must also be seen as political actors in the public sphere who legitimately raise their voice in their own right (Page 1996). If we introduce this dual role into the reasoning of the media's role in the European public sphere, the media's genuine voice in political communication about European issues and actors is still a desiderate. The effects of both roles must not necessarily coincide with reference to the issue of Europeanisation of political communication. The media's "own voice" may well emphasise European issues very strongly, while at the same time the media's coverage of other actors' public acts may reveal a predominantly national perspective.

In this paper, we aim to determine whether the media are rightly or falsely accused of counteracting the Europeanisation of national public spheres. Our empirical basis is an analysis of the structure of public claim making on several issues in Germany in the year 2000, which allows us to compare claims by the media themselves to those of other collective actors, both state and party elites, and actors from within civil society. The paper divides in three sections. In the first section, we shall briefly discuss the role of the media in the Europeanisation of public spheres and review the findings of current research. The criticism of these studies leads us to introduce our own approach, which maintains that Europeanised public communication should be studied with reference to the structure of claim making in specific policy areas, taking into account fields with both high and low degrees of political integration on the EU level. For the empirical part of the paper, we draw on data from the project "The Transformation of Political Mobilisation and

Communication in European Public Spheres" (Europub.com)[2] and analyse the communication through which political actors and media actors make public demands on selected issues. We will compare claims made by collective actors that appear in the news sections of a selected sample of German print media and compare them with claims that are made by these media themselves in the news sections as well as in the commentaries.

The Media's Role in the Europeanisation of the Public Sphere

Starting out from the problematic of the EU's – real or alleged – democratic deficit, there has been a vivid debate in Europe on the necessity to link the EU institutional structure and decision-making process with active involvement, acceptance, and legitimacy among the citizenry. The public sphere is at the core of these processes. While the necessity of a Europeanised public sphere is widely agreed upon, the scholarly debate (at least in Germany) has focused on controversies about how it should be theoretically conceptualised. Eder et al. (1998) propose a theoretical approach to a Europeanised public sphere that draws on deliberative democratic theory. Their view of a common European communicative space emphasises deliberative issue networks between the institutional sphere of power and organised interests and civil society actors. The authors illustrate their approach by pointing at the existence of transnational communication networks in the field of migration politics, which link EU institutional actors to actors in civil society. Their optimistic conclusion is that a European public sphere already exists. In doing so, they explicitly challenge the view of Gerhards (2000), who objects to such a notion of a European public sphere, because the supranational communication networks of civil society actors are highly selective and not inclusive as far as the whole political public is concerned. The findings of Rucht (2000) who demonstrates for Germany that social movement actors have considerably intensified their lobby activities in Brussels while protest mobilisation directed to the European level has not increased, point in the same direction. Likewise, Imig and Tarrow

(2000) show that mobilisation on the European level by transnationally organised European actors has so far been rare. Thus, while potentially civil society actors may have an important role to play in the Europeanisation of public spheres, the participation of a limited network of transnational NGO's in the Brussels and Strasbourg lobbying circuits cannot be taken as a sufficient manifestation of a transnational public sphere, as long as such activities are not linked and made visible to the larger public at the level of the member states.

From the perspective of a liberal representative concept of the public sphere, Gerhards (1993, 2000) argues that a European public sphere must be a mass-mediated public sphere. In the meantime, there is a significant strand of research that emphasises the centrality of media to the notion of a European public sphere (Schlesinger 1997, Schlesinger and Kevin 2000, Kunelius and Sparks 2001, Kevin 2003, Koopmans and Erbe 2003). Even more than on the national level, the communication flow between Europe and the public depends crucially on the mass media, as Eurobarometer data show that "two-thirds of EU citizens consistently identify the media in general and television in particular as their most important source of political information" (Peter and de Vreese 2003: 3).

Scholars have come to agree that the emergence of a genuinely transnational mass media system in Europe is rather unlikely. If there are supranational media to be detected, they are confined to a limited audience of political and business elites, who communicate in English, or they take the form of non-political media that specialise in sports and music (Kevin 2003: 38-41). Linguistic boundaries, cultural heterogeneity, and the fact that media systems are strongly bound to national mass audiences are crucial and perhaps insurmountable barriers to the formation of a unified European public sphere, which would be a replication on the European level of the structure we know from national media systems.

Several scholars (e.g., Gerhards 1993, 2000, Schlesinger and Kevin 2000) have therefore come to argue that the potentially emerging European public sphere must be sought within the national public spheres of the various European countries. This perspective maintains that Europeanisation "is for the most part dependent on the output of the national media" (Kevin 2003: 52). Such a Europeanisation of national public spheres would occur when nationally-based mass media shift their focus away from the national political arena towards the European level. Thus, if one is to find an increased proportion of media coverage on European issues and actors and if those were evaluated with references to transnational contexts, these authors would speak of a Europeanised public sphere.

Thus far, much of the work on such forms of Europeanisation of national public spheres has remained rather speculative. Empirical evidence is still rare and the few available studies concentrate on rather simple measures, such as the amount of European issues and actors in national news coverage (Peter and de Vreese 2003, Kevin 2003). Often also, conclusions are drawn from secondary analyses of data that were gathered for other purposes and are not always suited to grasp the intricacies of the European multi-level polity (e.g., Gerhards 2000, Eilders and Voltmer 2003). For example, Gerhards (2000: 294-5) finds that European issues comprise about seven percent on average of all issues in the news sections of the German quality press between 1961 and 1990. The proportion remains largely stable over time and only increases marginally in the early 1990s. Moreover, European institutions make up only about one percent of all publicly visible actors in those media. The marginality of European issues and actors is corroborated by Eilders and Voltmer's (2003: 16-7) analysis of commentaries in the German quality press between 1994 and 1998. They find that only six percent of the commentaries deal with European issues, and a mere two percent mention actors and institutions on the European level.

Such marginal levels of visibility of European issues and actors in the German print media hardly allow us to speak of the development of a Europeanised public sphere. This finding seems to hold also when we broaden the scope of investigation to other types of media, or to other countries. Thus, Peter and de Vreese (2003) analyse the representation of EU stories in the television news of five European countries over eleven months in the year 2000. Except for Denmark, the proportion of EU-related stories in television news in France, Germany, the Netherlands, and the United Kingdom is less than five percent during periods of routine news. The visibility of Europe increases to about ten percent around European summit meetings in all countries under study, again except for the news in Denmark, which stands out by a remarkable EU coverage prior to and after a referendum on the Euro held in September 2000.[3] Peter and de Vreese (2003: 23) confirm that "in terms of its officials, the EU is faceless. Given the power of an institution such as the European Commission, it is amazing how absent its officials were in the television coverage of EU (!) affairs." As far as the debate of a European public sphere is concerned, the authors' conclusion is rather sobering: "Although such notions may be desirable and theoretically challenging, the data presented in this article tell us this: there is no European public sphere. … Television, it seems, has never left the nation state" (Peter and de Vreese 2003: 25).

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[3] The Danish level of television coverage of EU affairs amounts to 19 percent of all news stories in routine periods, and 25 percent in summit periods.

The lack in visibility of European issues and actors in the media is attributed to a number of reasons related to the contradictory incentives underlying the political logic of the EU and the logic of national media organisations (Gerhards 1992, 1993). First, the institutional structure of the EU, the nature of European decision-making and the absence of citizens' involvement in the legitimisation of European actors are held responsible for the fact that EU politics is dominated by largely administrative politics and complex and intransparent negotiations. It is argued that such a decision-making process does not produce enough newsworthy messages and events on a regular basis, which can be tailored to the news values of the media – such as conflict, prominence, or drama. Moreover, European actors are not dependent on public legitimacy and support of the European citizenry, and therefore have no incentive to go public on the European level. This mechanism reduces the opportunities for the media of personalising European politics. Hence, the general argument is that European politics does not cater to the attention rules of the media, which undermines its public visibility.[4]

The second argument refers to the preferences and resources of the media, which are held responsible for the fact that EU politics is widely neglected (Gerhards 1992, 2000). Media organisations must attract large audiences. Due to the lack of public involvement and the lack of inherent newsworthiness of EU politics, the media cannot achieve this goal by covering European issues and actors. However, the situation of media audiences may have dramatically changed at least concerning one crucial European issue. The introduction of the Euro has introduced a symbol of Europeanness into the everyday lives of a wide audience, and therefore the argument concerning the public's detachment from European policies may no longer be as valid as it used to be.

It has further been argued that national media organisations devote rather limited resources to their news infrastructure in Brussels, and that Brussels correspondents face tough competition with other foreign correspondents for the limited available space for international news. Moreover, information flows in Brussels and the networks of EU-correspondents tend to be organised along national lines. This argument, too, may have lost some of its validity more recently. Meyer (1999) shows that the resources of media in Brussels have considerably increased, and that transnational networks of

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[4] This argument is corroborated by the findings of Peter and de Vreese, who show that more spectacular European events such as summit meetings do receive slightly higher levels of coverage, and that public mobilisations or referendums about European issues create a significant visibility of EU politics. This visibility however does not contribute to the visibility of European actors, but helps national actors to gain prominence on European issues.

journalists have emerged. Thus, regarding the media's genuine preferences and resources, the opportunity structures and incentives for covering European politics have probably improved considerably in recent years. In combination, the logic of EU politics and the logic of media organisations seem to constitute mutually reinforcing factors that fuel a vicious circle, which continuously reproduces the visibility deficit of Europe in the media. In this view, the media fulfil a central role as scapegoats for the lack of attention for Europe.

Against this background, one of the problems in the present research on the Europeanisation of public spheres is that the role of the media is not qualified and set apart from the role of other collective actors, whose actions constitute the input of the news production process. Instead, most studies fail to differentiate the actions of media from those of their sources and therefore reflect a rather one-sided approach that Schulz (1989: 140) has labelled as "the Ptolemean view". This perspective takes as its normative standard the view that the media should mirror an existing objective reality and be neutral channels of information. The observation that in contrast to this prescription, the media function according to their own news values and production rules, leads to accusing them of cultivating a "wrong" picture of reality. From this point of view, the media fail to fulfil their information function adequately (Kepplinger and Mathes 1988). The contrasting approach to the media, which is labelled as the "Copernican view" by Schulz (1989: 141–142) takes a different perspective. It does not regard the media as passive purveyors or mirrors of any objective reality, but pictures them as active constructors of reality. In this perspective the media reality is seen as a legitimate product that relates to information from external sources, such as the objective events and messages from the environment that are processed according to selection rules following the norm of journalistic objectivity. In addition to conveying information from external sources, it is granted in this perspective that the media may stand out as actors in their own right. Thus, the media are acknowledged as actors in the public sphere that legitimately contribute to the political discourse by adding their own voice (Page 1996). If this "pragmatic" (Schulz 1989: 143) approach is applied, the media must not be accused of distorting any objective or wishful reality, but are viewed as actors that fulfil a dual function. On the one hand they act as mediators of information from external sources. In this function, they shape information flows that are of most crucial importance for the national as well as supranational polities, which rely on a free flow of information as the basis of processes of democratic legitimisation, responsiveness, accountability and participation (Koopmans and Erbe 2003). On the other hand, they are

granted a role as actors in their own right, which are to contribute to opinion formation by commenting on political issues and events.

From this point of view, the mass media fulfil some crucial functions in the European public sphere, which Eilders and Voltmer (2003: 9-10) discuss as (1) agenda setting and "second-level agenda setting" (or framing), and (2) opinion formation, which refers to presenting own positions on those issues, as well as evaluations of actors. In their function as agenda setters the media select issues from external sources and present them as topics for public deliberation (Dearing and Rogers 1996, Protess and McCombs 1991). In their agenda-setting role the media shape the news coverage, which is particularly dependent on the external flow of information. However, within the recognised formats of commentary sections, they may introduce their own saliencies in the issue agenda. The same duality applies to the so-called "second-level agenda-setting" function (Ghanem 1997, McCombs et al. 2000). This notion refers to the process that scholars in research on public discourse term "framing". Framing refers to the contextualisation of issues, namely the construction of a framework of interpretative meaning around an issue, which then is taken as a basis for collective opinion formation. Again, publicly visible frames can be rooted either in the communicative actions of external actors that are conveyed by the media, or stem from the interpretations of the media themselves. If the media's role is qualified in this way, one can expect that the publicly visible issue agendas and frames that are promoted by the media, on the one hand, and by other socio-political actors, on the other, must not necessarily coincide. The media's own agenda may well emphasise European issues strongly, while at the same time the agenda and frames of other actors as covered by the media may adhere to a predominantly national perspective.

The most genuine and specific media function refers to their active role in opinion formation. This implies that the media not only report about others' opinions, but take legitimate positions on issues by commenting on the opinions and actions of non-media political actors. This function is institutionalised in commentaries, where the media enact their role as opinion makers. Eilders and Voltmer (2003: 11) point to the fact that in most national public spheres, the media follow patterns of political preferences, which form a more or less stable commentary line. The commentary line contributes to the identification of a media outlet, and situates it within the spectrum of political cleavages. However, in many countries European politics is not strongly linked to the traditional left-right spectrum, so that the national cleavages cannot be transferred easily to European politics. The media may therefore have more room to manoeuvre politically where their opinion on

European issues is concerned. In such circumstances, the media may choose to follow the opinion of the political elite, but they may also side with other interests such as civil society organisations, or speak in line with general public opinion. Another function that comes with the notion of media as political actors and which is institutionalised in the media format of commentaries, refers to their legitimate potential to evaluate and criticise other actors. Thus, the media may be favourable towards European integration and yet present critical opinions on the performance of European or national actors.

If the media's role in the Europeanisation of public spheres is conceptualised according to their dual role as conveyors of external information and as active participants in political discourse, we must conclude that the studies that were discussed above are of rather limited value conceptually as well as empirically. They confuse the role of the media and the role of information sources in political communication in general, as well as more specifically in a potentially emerging European public sphere. The particular media voice can only be detected if the genuine messages by the media are distinguished from those of other actors in the news coverage. The media's own voice can be derived from editorials and press commentaries, which constitute the institutionalised and legitimate format for journalists and editors to explicitly take stands in actual controversies.

Conceptual Framework: European Public Spheres as Diversified Structures of Claim Making

Against this background we aim to introduce an alternative approach for studying the Europeanisation of public spheres and for assessing the role of the media compared to political and civil society actors. Three aspects are of crucial importance to our conceptual approach and the design of the empirical analysis.

First of all, we generally do not conceive of a European public sphere by restricting the perspective to either national public spaces per se or to the supranational media system. Instead we speak of a Europeanised public sphere in a relative sense. Following the work of Koopmans and Erbe (2003), we propose that the spatial reach and boundaries of public communication can be determined by investigating patterns of communicative flows and assessing the relative density of public communication within and between different political spaces. Since we look at the German case, the centre of this communicative space is the German public sphere. The next level of communication refers to other national European public spaces, which

comprise the EU member countries and those countries that are candidates to enter the EU. The third level comprises the transnational, European political space, in which the European institutions and common policies are situated. The degree to which public spheres can be deemed "national", "transnational", or "European" depends on the density of communicative linkages within and between these spaces. Thus, we speak of a Europeanised public sphere to the extent that a substantial – and over time increasing – part of public communication does neither stay confined to the own national political space nor extends beyond Europe without referring to it.

It follows from this notion that where the Europeanisation of national public spheres is concerned, the media – as well as other actors – may engage in two basic forms of geo-political and spatial contextualisation of their public communication:

1. *Vertical Europeanisation*, which consists of communicative linkages between the national and the European level. There are two basic variants of this pattern, a bottom-up one, in which national actors address European actors and/or make claims on European issues, and a top-down one, in which European actors intervene in national policies and public debates in the name of European regulations and common interests;

2. *Horizontal Europeanisation*, which consists of communicative linkages between different member states. We may distinguish a weak and a strong variant. In the weak variant, the media in one country cover debates and contestation in another member state, but there is no linkage between the countries in the structure of claim making itself. In the stronger variant, actors from one country explicitly address, or refer to actors or policies in another member state.

In previous research, only vertical Europeanisation has been considered. By adding the dimension of horizontal Europeanisation, our study is better equipped to capture the flow of politically relevant communication within the common European space.

Second, in order to assess the role of the media as compared to other actors, we move beyond the usual article-level types of content analysis to consider individual public claims by different collective actors. Our units of analysis are thus individual acts of political communication, which we label as public claims. A claim is defined as an instance of strategic action in the public sphere. It consists of the expression of a political opinion by some form of physical or verbal action, regardless of the form this expression takes

(statement, violence, repression, decision, demonstration, court ruling, etc.) and regardless of the nature of the actor (media, governments, civil society actors etc.). Statements by the media are recorded if a journalist makes a claim in an explicit way in the news coverage, either in articles in the news section or in commentaries and opinion pieces.

An act of claim making usually consists of the following elements:
- a subject actor, or claimant, who makes a demand, proposal, appeal, or criticism;
- an addressee, who is held responsible for implementing the claim, or is the target of criticism or support;
- an object actor, whose interests are or would be positively (beneficiary) or negatively affected by the claim;
- the substantive content of the claim, stating what is to be done (aim) and why (frame).

By taking instances of claim making as the units of analysis, we are in a position to exactly identify who speaks publicly to whom, in whose interests, and with reference to which issues and argumentative frames. Thus we are able to provide much more detail on the interactive and argumentative structure of public communication than traditional methods of media content analysis. The latter may give us information about the frequencies and co-occurrences of different actors, issues, and frames, but do not allow us to establish the linkages between them. Our data allow us to analyse the claim making of detailed actor categories (e.g., German farmers, or the European Parliament), but most of our analysis in this paper will focus on the characteristics of the claim making of three broad actor categories. Next to the media, we look at state and party actors, which can be regarded as the actors at the centre of the political system, and interest groups and civil society actors, who try to influence the system from the periphery.

Third, one of the major shortcomings of previous studies is that they look for a Europeanisation of public communication on a very general level, gathering data across all possible political issues. Contrary to this approach, we do not expect Europeanisation to emerge as a phenomenon that penetrates the national public spheres with regard to all themes of public debate or all policy fields. Considering the large differences in the actual competencies of European institutions among different policy fields, it is relatively meaningless to compute a summary measure of the degree to which European institutions and policies are mentioned across all political issues and to derive conclusions about the presence or absence of a "public sphere deficit" on this basis. Such averages may hide considerable differences between issue fields, some of

which may be highly Europeanised, while others may be debated largely in a national context. Moreover, a meaningful interpretation of results is only possible at the issue-specific level. Whereas we might legitimately conclude that a public sphere deficit exists if the coverage of agricultural politics contains hardly any reference to the EU and its policies, a similar finding for education politics would have a completely different meaning, simply because the EU is objectively a more important actor in agriculture than in education politics.

Following a political opportunity structure perspective (e.g., Tarrow 1994; Kriesi et al. 1995), we expect patterns of claim making to reflect the actual distribution of power between the European and the national level, as well as whether the European decision-making process is primarily intergovernmental or primarily supranational in nature. In order to test this assumption, our analysis focuses on seven issue fields. In addition to the meta-field of European integration, six substantive policy domains were selected systematically according to their level of formal Europeanisation, reaching from fully integrated to merely coordinated domains: (1) Monetary politics: currency politics and interest rate, and (2) Agriculture: subsidies, livestock and dairy quotas, animal disease control represent issue areas that are characterised by a high degree of EU involvement in national politics, which to an important extent entails supranational powers for EU institutions. (3) Immigration: entry and exit, and (4) Troop deployment mark the policy areas in which we observe increasing EU competencies (or at least attempt to increase the EU's role), but where national decision-making is still predominant and the EU political process is dominated by intergovernmental negotiations. Finally, (5) Retirement and pensions and (6) Primary and secondary education are domains that have largely remained under the umbrella of national or regional decision-making, and where the role of the EU is very limited.

To sum up, our study on the media's role in European integration is based on a notion of Europeanisation that extends beyond the usual simple frequency measures of European actors and issues in national media. In contrast, we maintain that Europeanised public communication must be studied with reference to the interactive nature of public communication, and the horizontal (between member-state) and vertical (between member-states and the EU level) linkages that are made by actors intervening in the public sphere. We apply the analytical approach of claim analysis and use this tool to study processes of agenda setting and framing as well as policy positions and evaluations by media as compared to other actors. We further aim to draw a more realistic assessment of patterns of Europeanisation of public communication by showing how the nature and degree of Europeanisation

varies among policy areas. Our expectation is that Europeanised communicative linkages appear particularly in those policy domains in which EU actors and policies have real and substantial powers.

Data Basis and Methodology

Although the larger project of which this paper is a part includes seven European countries, we will here draw only on data for the German case. For the analysis of political claims by media and non-media actors, we draw on the news coverage and editorials of four daily newspapers of different types that were selected to represent the national German print media landscape: a centre left (the Süddeutsche Zeitung) as well as a centre right quality newspaper (the Frankfurter Allgemeine Zeitung), a tabloid paper (the Bild–Zeitung), as well as a regional newspaper in a region with a specific regional identity (the East German Leipziger Volkszeitung). Although eventually our data set will include a broader time frame, the data in this paper refer to the year 2000, for which we have completed the coding of both news articles and editorials. In order to restrict the coding effort to manageable proportions, we used a sampling strategy. For each of the two quality newspapers, one issue per week was coded, for the tabloid and regional paper one issue every two weeks. The newspapers were alternated in such a way that we coded one of the newspapers for every second day of the year. In order to obtain sufficient cases to analyse the own voice of the media, we took a larger sample of editorials. In this case, all four newspapers were coded for every second day of the year. Altogether, our analysis draws on the news articles from 156 newspaper issues, and the editorials from 624 issues.

As already indicated above, our coding of claims records the actor or claimant, the actors or institutions at which demands, criticism, or support is addressed, the object actors in whose interests the claim is made, and the content of the demand and the argumentative framing that supports it. Importantly for determining whether or not we are dealing with Europeanised claims, we code the geographical or polity level at which the different actors and institutions that are mentioned in the claim (claimants, addressees, object actors) are situated (e.g., European or national), as well as, in the case of national or subnational actors, the country where they are based (e.g., Germany, France). To give the reader an idea of how this coding works, consider the following example of a claim in the field of troop deployment: "Foreign Minister Joschka Fischer criticised Britain and Spain's support for the USA's military campaign against Iraq, saying that this had undermined the search for a common European position on the issue." The claimant is Fischer, whose scope is coded as national, Germany; Britain and

Spain are the addressees (with negative evaluation), the USA and Iraq are the object actors. Although these are all national actors, the issue is framed by Fischer in a European context. Thus, the issue scope in this case would be "European".

Findings

The salience of European issues

We begin our analysis by looking in Table 1 at the issue agendas of our four newspapers, in comparison to those of state and party actors, on the one hand, and civil society actors, on the other. In order to correctly assess the role of the German media we compare them only to other German actors, and ignore for this analysis any claims that were made by non-German actors.

Compared to non-media political actors, the German media pay considerably more attention to the issue of European integration. Only the Bild-Zeitung comes close to non-media actors in this regard. By contrast, the two issue areas that are most clearly institutionalised on the national level, education and pensions, are underrepresented among the media claims. Attention for European integration is particularly low among German civil society actors. These actors are distinguished especially by a strong focus on monetary politics and to a lesser extent also pensions and retirement. This is linked to a predominance of socio-economic actors among the civil society actors in our data: unions, employers, professional groups, as well as economists and financial experts. Among the four newspapers, there are some noteworthy differences of emphasis regarding attention for the six substantive issue fields. Bild and SZ report more on monetary politics, while education is particularly emphasised by the FAZ. These differences among the newspapers notwithstanding, the remarkable finding in this table is that in sharp contrast to what much of the literature on European public spheres would have us belief, the media seem to have a rather strong interest in the issue of European integration.

Of course, Europeanised political communication must not take the form of debates on the meta-issue of European integration itself, but may occur in the form of emphasising European dimensions when discussing the other six, more substantive policy issues. According to the predominant view on the role of the media in Europeanised political communication, the media are particularly prone to frame issues in a purely national perspective. Table 2 allows us to test the validity of this argument for the vertical form of Europeanisation, which consists of references to EU-level policies, actors, institutions, norms and values.

Table 1: Issue agenda in claim making of German news media and political actors

	SZ	FAZ	LVZ	Bild	Total German media actors*	German state and party actors	German civil society actors	All German non-media actors	All German actors
Monetary politics	27.3	12.7	13.6	33.3	19.0	5.5	28.0	12.6	15.0
Agriculture	7.8	8.2	13.6	14.3	9.0	12.1	7.1	10.5	10.0
Immigration	7.8	10.9	6.8	14.3	10.8	18.7	17.3	18.2	15.4
Troop deployment	2.3	5.5	0.0	0.0	3.0	1.6	0.0	1.1	1.9
Pensions/ retirement	15.6	13.6	22.7	19.0	17.5	28.3	21.4	26.2	22.8
Education	2.3	18.2	6.8	0.0	9.0	12.6	19.6	14.8	12.6
EU integration	36.7	30.9	36.4	19.0	31.6	21.2	6.5	16.5	22.3
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
N	128	110	63	21	332	364	168	532	864

* In addition to the 303 claims by our four newspapers, this includes 29 claims by other German news media that were cited in our four source papers.

Table 2:
Percentage of claims by German actors with a vertical European frame of reference, by actor and issue field*

	SZ	FAZ	LVZ	Bild	Total German media actors	German state and party actors	German civil society actors	All German non-media actors	All German actors
Monetary politics	91.4	57.1	66.7	71.4	77.8	70.0	95.7	88.1	83.2
Agriculture	80.0	77.8	83.3	(100.0)	76.7	29.6	33.3	30.4	46.5
Immigration	0.0	8.3	(33.3)	(0.0)	8.3	11.8	0.0	8.3	8.3
Troop deployment	(0.0)	16.7	-	-	20.0	16.7	-	16.7	18.8
Pensions/ retirement	0.0	6.7	0.0	(0.0)	1.7	1.0	0.0	0.7	1.0
Education	(0.0)	0.0	(0.0)	-	0.0	2.2	0.0	1.3	0.9
Total	49.4%	23.7%	35.7%	47.1%	34.4%	13.2%	31.2%	19.6%	24.6%
N	81	76	28	17	227	287	157	444	671

Percentages based on five or less cases are in brackets.

* The European integration issue field is not included here, because it by definition has a European frame of reference in the vertical sense because claims in this field always implicate the EU or other forms of European integration, and would therefore not differentiate between actors. The presence of a vertical European frame of reference is measured in the most inclusive way possible. It suffices that either the addressee, the supported actor, the opponent, the framing of the first, second, or third issue, or the first, second, or third object actor have a European scope (EU or other European). In other words, a claim that refers in only one out of these nine aspects to the European level would be classified as a claim with a European frame of reference, even if all other aspects would refer only to the national German level.

Table 3:

Percentage of claims by German actors with a horizontal European frame of reference, by actor and issue field*

	SZ	FAZ	LVZ	Bild	Total German media actors	German state and party actors	German civil society actors	All German non-media actors	All German actors
Monetary politics	17.1	14.3	0.0	0.0	12.7	25.0	0.0	7.5	10.0
Agriculture	30.0	11.1	0.0	(33.3)	16.7	20.5	8.3	17.9	17.4
Immigration	10.0	0.0	(0.0)	(0.0)	2.8	5.9	3.5	5.2	4.5
Troop deployment	(0.0)	0.0	-	-	0.0	0.0	-	0.0	0.0
Pensions/ retirement	0.0	6.7	0.0	(0.0)	1.7	1.0	0.0	0.7	1.0
Education	(0.0)	5.0	(0.0)	-	3.3	0.0	0.0	0.0	0.9
EU integration	55.3	50.0	68.8	50.0	57.1	39.0	18.2	36.4	47.7
Total	28.1%	20.0%	25.0%	14.3%	22.9%	13.5%	2.4%	10.0%	14.9%
N	128	110	44	21	332	364	168	532	864

* Like its vertical counterpart, the presence of a horizontal European frame of reference is measured in an inclusive way. It suffices that either the addressee, the supported actor, the opponent, the framing of the first, second, or third issue, or the first, second, or third object actor refer to another EU member country or to one of the candidate countries – either to these countries as a whole, or to specific actors within them.

Contrary to the predominant view in the literature, media actors are somewhat more likely than other actors, and especially than state and party actors, to frame issues in a way referring to the European level. However, if we control for differences between the issue fields, the tendency is weak, and in general it does not hold to the same extent for the FAZ. The higher overall percentage of Europeanised claims for the media is largely a result of the way in which they treat agricultural issues, which are framed much stronger in a Europeanised way by media actors than by German state, party, and civil society actors. Even though the evidence does not unequivocally show that the media are more inclined to emphasise vertical European dimensions of issues, the results certainly do not suggest the received position that the media would be inclined to de-emphasise the European dimension and to treat issues preferably in national terms.

Comparing the issue fields, we see that across actor types the tendency to refer to European policies and institutions is highest for the issue fields of monetary and agriculture politics, where the EU has strong supranational competencies. The level of vertical Europeanisation is intermediary for immigration and troop deployment, where EU competencies are more limited and primarily intergovernmental. Finally, vertical Europeanisation of claim making is virtually non-existent in the two issue fields that have remained almost fully in the national sphere of influence and where EU competencies are very limited, education and pensions. This result closely fits a political opportunity structure explanation of patterns of claim making. The results seem to indicate that where Europeanisation takes the form of supranational transfers of power to EU institutions, this leads to a concomitant shift in patterns of claim making addressing European policies and institutions. However, the intergovernmental forms of decision-making that predominate in the troop deployment and immigration fields have only weak effects on patterns of claim making. In fields characterised by such decision-making processes, addressing national institutions and policies remains the most efficient way for collective actors to further their interests.

However, as we have argued it is necessary to also consider a second, horizontal form of Europeanisation of claim making, which consists of references to policies, actors, and institutions in other member states, and that does not necessarily have to refer to the EU level. Table 3 gives an overview of the extent of such horizontal Europeanisation.

Similar to the findings in Table 2, horizontal Europeanisation is strongest in monetary and agriculture politics, intermediary in immigration politics and low in education and pensions politics. Troop deployment, however,

occupies a somewhat different position in this table since no references at all were made in claim making on this issue to other member states or candidate countries. Generally, the level of horizontal European framing is much lower than the level of vertical European framing. This once more suggests that genuinely European institutions and policies, rather than intergovernmental cooperation and cross-national diffusion create incentives and opportunities for claim makers to frame their public communication and mobilisation in ways that transcend the boundaries of the nation-state.

Regarding the six substantive issue fields, we do not find strong and consistent differences between actor types in the degree to which issues are framed referring to other member states or candidate countries. However, media are clearly more likely to frame the European integration issue by referring to other EU member states and candidate countries, whereas non-media actors, and civil society actors in particular, have a tendency to frame their claims only in terms of Germany's relations to EU policies and institutions. Thus again, our results strongly disproof perspectives on the problematic of European public spheres that attribute the blame for a lack of Europeanisation of public communication to a lack of attention of the media for Europe and to the media's alleged tendency to frame issues in purely national terms. The results of tables 2 and 3 indicate quite to the contrary that the news media are more likely than other political actors to pay attention to European integration and to emphasise vertical and transnational European aspects of issues. If a particular actor category can be singled out whose contributions to public communication on issues of European relevance lag behind institutional developments, this holds for civil society actors. Seen from this perspective, Europe's democratic and communication deficits may lie not so much in a reluctance of the media to cover European issues and aspects, but in the lack of a Europeanised civil society, perhaps linked to a lack of access of civil society groups – except powerful socio-economic actors – to the European decision-making process.

The evaluation of European integration and European institutions

Even though the previous section has shown that the mass media pay considerably more attention to European (dimensions of) issues than other actors, this still leaves open the possibility that such attention for Europe is primarily negative. This, too, is a frequent assumption about the role of the media in the European integration process.

In this view, if the media pay attention to Europe at all, they would tend to depict European policies and actors as conflicting with national interests, as inefficient, bureaucratic, and undemocratic, while national actors and policies would receive (at least in a relative sense) a more positive treatment. We begin

our investigation of the validity of this thesis in Table 4, which shows the average position taken in relation to the European integration process by different actors. Position scores were coded and computed in such a way that a score of –1.00 indicates that an actor's claims always take a negative position with regard to European integration, while an actor with a score of +1.00 would without exception express a positive stance towards the integration process.

Table 4: Average position of German actors regarding the European integration process

	General position regarding European integration
Federal government	.58
Green Party	.50
German EU Parliamentarians	.50
SPD	.49
German EU executives	.43
CDU	.42
Labour unions	(.40)
Leipziger Volkszeitung	.38
All state and party actors	.34
Süddeutsche Zeitung	.33
All German media actors	.26
Bild-Zeitung	.18
Experts and professionals	.16
All civil society actors	.15
Bundesbank	.15
FDP	.13
Regional and local governments	.09
Frankfurter Allgemeine Zeitung	.08
Employers	.06
Bundestag	.00
CSU	-.07
Farmers	(-.50)
Overall average	.28
N=	540

Averages are given only for actors with at least 3 cases, averages based on 3-5 cases are in brackets. Categories with less than 3 cases are indicated with -.

As table 4 shows, the news media in Germany are neither particularly pro–European nor particularly anti–European integration compared to other collective actors. The average valence of the media's position regarding European integration is very close to the average for all actors. There are important differences between the four papers, though, with the LVZ and SZ being more clearly pro–European integration, and Bild and even more so FAZ more critical and sceptical. Nonetheless, pro as well as anti positions are much less outspoken among the media than among political actors. In other words, the degrees of polarisation and difference of opinion on European

integration are much larger among political parties, with the Greens and the CSU in the extreme positions, than among the four newspapers. In the German context, then, media communication on Europe seems a centripetal, rather than a centrifugal force.

There are some remarkable findings on the other actors that we want to briefly refer to. The German federal government takes the most pro-integration position of all. This may be a German peculiarity, or due to the fact that a left-wing government of pro-European parties is in power. Cross-national and longitudinal comparisons will have to show whether this is a pattern that more generally holds. Further, there is an important difference between the two main socio-economic actors, with the labour unions being clearly in favour of further European integration, and the employers being among the most sceptical actors. This is quite remarkable, given the fact that employers have thus far profited much more from common market policies than the labour unions. This result may be due to the fact that at present, discussions about further integration are mainly about social and political forms of integration that go beyond the common market. Employers' organisations are perhaps sceptical about such further-reaching forms of integration and would prefer to retain a purely economic conception of integration, whereas labour unions might have the exact opposite interest. This is an issue for further investigation that, however, does not play a crucial role for the questions that are central to this paper.

Contrary to a predominant imagery in the literature, which suggests an opposition of interests between EU and national actors, and an alliance between supranational actors and regional and local actors against the influence of the nation-state, the results indicate that regional and local governmental actors are less inclined to be supportive of European integration than their national counterparts. Again, without further longitudinal and cross-national comparison, we cannot determine whether this finding can be generalised, or that it is perhaps just a result of the present composition of the German federal government (the low score for regional and local governments, by contrast, does not seem to be caused by the party composition of governments at this level, because regional SPD-led governments also tended to be more critical toward the European integration process than the national government).

Farmers occupy the most negative position regarding European integration, which is remarkable given the fact that this is one of the social group that profits most from EU policies. This (together with the reluctant support from regional and local governments which are also preferentially targeted by the

EU's structural funds) may be an indication that client politics are not the most conducive way to deepen support for European integration. To the contrary, this may create a purely instrumental and particularistic attitude toward the EU that does not translate in wider support for European integration.

Table 5: Evaluation by German actors of European institutions and actors

	Evaluation of European institutions and actors
Employers	.17
SPD	.07
Federal government	.05
Süddeutsche Zeitung	.00
All civil society actors	.00
Experts and professionals	-.02
German EU executives	-.10
Bundestag	-.14
All state and party actors	-.15
All German media actors	-.16
Green Party	-.17
Bundesbank	-.20
Frankfurter Allgemeine Zeitung	-.24
Bild-Zeitung	-.25
CSU	-.37
Regional and local governments	-.38
Labour unions	(-.40)
Leipziger Volkszeitung	-.41
CDU	-.47
German EU Parliamentarians	-.50
FDP	-.50
Overall average	-.13
N=	355

Averages are given only for actors with at least 3 cases, averages based on 3-5 cases are in brackets.

In Table 5, we look at support for European integration from a somewhat different angle, namely that of the evaluation not of the integration process in a general sense, but of concrete European actors and institutions. These two may well diverge. For instance, an actor may be supportive of a deepening of European integration, while being at the same time highly critical of the way in which European institutions function at present.

Table 5 shows that such a discrepancy between general support for European integration and specific support for European institutions and actors is indeed widespread. While on average the European integration process is moderately positively evaluated (an average valence of .28, see Table 4), European actors and institutions are on average evaluated in a slightly negative way (average

valence –.13). However, this is probably less a specific characteristic of the public debate on European integration, than a general feature of democratic public spheres. Public communication is predominantly a communication of conflict, in which actors criticise other public actors. Because of this general tendency for public claim making to have a negative bias with regard to other actors, we need a standard of comparison to interpret the results for the evaluation of EU actors and institutions. The average evaluation of national German (including regional and local) actors is with –.38 clearly lower (not displayed in the table) than the evaluation of EU institutions and actors (–.13). For state and party actors, the average evaluation of national actors is .30 (EU –.15), for civil society actors –.44 (EU .00), for media actors –.29 (EU –.16). Civil society actors therefore not only have the most positive (or better least negative) attitude with regard to EU institutions and actors, but the contrast with the evaluation of national actors is also strongest for this category. For all three actor categories, however, European actors and institutions are seen less critically than national actors and institutions – once more a finding that contradicts the pessimistic tone that predominates in the literature on political communication in relation to European integration.

There are significant differences in the evaluation of different EU institutions (not displayed in the table). The European Parliament is on average evaluated positively, followed by the European Central bank, which also still scores a positive average. The Commission receives a moderately negative evaluation, while the European Council (and its subcouncils) is viewed most critically. These differences seem to hold largely across actor categories, although the numbers of cases per actor become too small to get a reliable picture at this level of detail. This, too, is a remarkable finding, since it suggests that there is more public support for supranational forms of European institutionalisation, whereas the intergovernmental arena of the Council is seen much more critically. This fits with the results from tables 2 and 3, which showed that a lagging of public communication behind institutional Europeanisation is most clearly found in issue areas characterised by intergovernmental forms of decision-making.

Although there is some correlation between the general position regarding the European integration process and the evaluation of EU actors and institutions, this relation is far from perfect. If we combine the results from Tables 5 and 6, we see that some actors have a comparatively high evaluation both of the integration process and of EU institutions. The clearest representatives of this pattern are the Federal government and the SPD. Another group of actors are both lukewarm to critical about the integration process and highly negative about EU institutions. This is true for the CSU

and the FDP, as well as for regional and local governments. There is also a group of actors who are highly positive about the integration process, but are very critical of EU institutions and actors. This holds for the CDU, the labour unions, as well as for German members of the European Parliament. Interestingly, employers show exactly the reverse pattern from labour unions. They are comparatively negative towards the integration process, but have the highest evaluation of EU institutions of all actors. Probably, this indicates an instrumental attitude toward the EU, which values the role of EU institutions in market deregulation, but is coupled to a very critical attitude toward further-reaching political and social forms of European integration. The low numbers of cases for the one year of data we analyse here do not allow us to test this and similar hypotheses for individual actor categories. Future analyses including a broader data basis will allow us to go into greater qualitative detail on the position of different collective actors.

The positions of the four newspapers are less clear-cut than those of most non-media public actors. The FAZ takes a position between the CSU and FDP on the one hand, and the employers, on the other. In other words, they do not value the integration process very highly, and are ambivalent about EU institutions. The LVZ takes a position in between CSU and FDP, on the one hand, and CDU and labour unions, on the other: they are highly negative about European institutions and relatively ambivalent about the integration process. SZ is in between the employers' position and that of the SPD and the federal government: ambivalent about the integration process, but relatively positive about EU institutions. Bild, finally, represents the mainstream, taking an average position on both dimensions.

Finally, we look in Table 6 at the way in which European integration is framed. Here the question is the arguments that actors use to back their position on European integration. Such legitimisation of an actor's position with regard to European integration can refer to certain values and norms, to constitutional and governance principles, or to the EU's instrumentality for reaching other valued goals. The largest difference in Table 6 is between civil society actors on the one hand, and state and party as well as media actors, on the other. Civil society actors – which in our data are predominantly socio-economic groups and organisations – strongly emphasise the instrumental side of European integration, particularly socio-economic advantages and disadvantages. Strength in global economic competition, economic stability, and economic growth were most often mentioned as advantages of European integration, while inflation and high prices, as well as adverse effects on the national economy (particularly linked to the introduction of the Euro) predominated among the disadvantages that were mentioned by civil society actors.

Table 6:
Frames used in relation to European integration and European institutions, by claimant category

	State and party actors	Civil society actors	Media	All German actors
Principles, norms, values	16.5%	7.7%	31.4%	21.8%
Community of values	3.8%	2.6%	9.8%	6.4%
Modernisation	2.3%	-	2.9%	2.3%
Racism/xenophobia/nazism	1.5%	2.6%	2.0%	1.9%
Social justice and equality	1.3%	-	2.9%	1.8%
International understanding	-	-	2.9%	1.4%
Peace	1.3%	-	2.0%	1.4%
Unity	1.3%	2.6%	1.0%	1.4%
Other	5.0%	-	7.9%	5.2%
Constitutional and institutional principles	32.9%	7.7%	18.6%	21.8%
Democracy	6.3%	-	9.8%	6.8%
Equality among member states	8.9%	-	4.9%	5.5%
Subsidiarity, federalism, centralisation, separation of power	7.6%	2.6%	-	3.2%
Human rights	3.8%	-	1.0%	1.8%
Rule of law	1.3%	2.6%	1.0%	1.4%
Other	5.0%	2.6%	0.9%	3.1%
Governance	20.2%	20.5%	13.7%	17.3%
Acceptance/legitimacy/credibility in the eyes of the citizenry	7.6%	7.7%	2.9%	5.5%
Transparency	3.8%	7.7%	3.9%	4.5%
Efficiency	6.3%	2.6%	3.9%	4.5%
Bureaucracy	1.3%	2.6%	2.0%	1.8%
Other	1.2%	-	1.0%	1.0%
All identity frames	69.6%	35.9%	63.7%	60.9%
General instrumental frames	3.8%	5.1%	2.0%	3.3%
National interest	2.5%	2.6%	1.0%	1.8%
Other	1.3%	2.6%	1.0%	1.5%
Political (dis)advantages	8.9%	5.1%	5.9%	6.8%
Security	5.1%	2.6%	-	2.3%
Influence in international relations	-	2.6%	2.9%	1.8%
Coping with transnational social problems	1.3%	-	2.0%	1.4%
Other	2.5%	-	1.0%	1.3%
Economic (dis)advantages	16.7%	53.8%	28.4%	29.1%
Economic stability	3.8%	10.3%	6.9%	6.4%
Inflation and prices	2.5%	12.8%	5.9%	5.9%

Economic growth	3.8%	10.3%	2.9%	4.5%
Strength in global competition	2.5%	12.8%	2.0%	4.1%
National economy and exports	-	7.7%	2.9%	2.8%
Consumer protection	1.3%	-	3.9%	2.3%
Other	2.8%	-	3.9%	3.1%
All instrumental frames	30.1%	64.1%	32.3%	39.1%
Total	100.0%	100.0%	100.0%	100.0%
N	79	39	102	220

Note: Separately listed are those frames that have at least 3 mentions for all actors taken together. Note also that a frame may be used both negatively and positively with regard to the EU. E.g., some actors argued that European integration furthers economic stability, whereas others emphasised destabilising impacts; both were coded in the category "economic stability". We have of course also coded the direction in which a frame is linked to the EU, as well as whether it is used as a characterisation of the present state of affairs (e..g., the EU is inefficient") or a statement about what the EU should be "e.g., the EU should become less bureaucratic"). However, for the present analysis we ignore these differences, also because with our present data limitations the numbers of cases would quickly become too low for such more detailed analyses.

By contrast, both state/party and media actors emphasise immaterial aspects of the European integration process. Within that category there are important differences of emphasis, however. State and party actors are comparatively strongly preoccupied with constitutional issues and institutional principles such as equality among member states, the future institutional structure of the EU (subsidiarity, federalism, etc.), and the EU's democratic quality. The latter aspect is the only constitutional/institutional aspect that is more often emphasised by media actors than by state and party actors. Differences among the three actor categories are smaller regarding the relevance of governance frames. Legitimacy and credibility in the eyes of the citizenry are considered important by all, and the same is true for efficiency and transparency.

Media actors are distinguished by a comparatively strong emphasis on general identity frames referring to principles, norms, and values for which the EU stands or to which it should adhere. Such frames are twice as frequent in media claims than among state and party actors and more than four times more frequent than in claim making by civil society actors. The idea of Europe as a "community of values" is the most prominent among such frames, and arose particularly within the context of the debate on Jörg Haider and his party's participation in the Austrian government. In addition, the media more frequently referred to other values such as social equality, peace, and the promotion of international understanding (Völkerverständigung) in relation to the process of European integration.

Summarising, one might say that where civil society actors emphasise the instrumental, economic side of European integration, and state and party actors emphasise constitutional principles and governance, the media emphasise the collective identities, norms, and values that Europe should stand for. More than any other actor category, the German media therefore promote an idealist conception of Europe. This result is a far cry from the caricature that is often depicted of media coverage of Europe, which suggests that it is the media in particular who emphasise instrumental and particularistic framings of Europe.

Conclusion

Starting out from the existing research on the media's role in the Europeanisation of public sphere, our empirical results challenge the notion that the media are responsible for the resilience of largely nationally focussed public spheres. Quite the contrary is the case, at least according to our findings on Germany for the year 2000. The German media turn out to pay more, and more favourable attention to the issue of European integration, as well as to the European dimensions of other political issues than other actors. Moreover, the media put a much stronger emphasis on Europe as a political community that rests on common values, and less strongly emphasise instrumental and particularistic reasons for their support for the European integration process. Our study therefore does not yield evidence for the caricature of media as scapegoats for the lack of a European public sphere. Instead, in our perspective, if the media speak with their own voice, they rather act as motors of Europeanisation and thereby contribute to the opening up of spaces for transnational communication. In contrast, the national political elites of the state and political parties, and even civil society actors are much more inclined to keep the public debate within national boundaries.

Whether this is typical for the German media or a more general trend in Europe of course remains to be investigated by way of cross–national comparative analyses. At any rate, our results show that lacking public attention and support for European integration cannot be attributed to general characteristics of the news media such as the lack of "news value" of European policies and actors, or the presumed national perspective that dominates among journalists and editors. It may of course be that in some other members states (e.g., the UK) the news media are distinguished from other actors by paying less attention to European issues, being more critical towards the EU, and framing integration in instrumental and particularistic

terms. However, if this were true, we would have to look for a context-sensitive explanation rather than general, decontextualised assumptions about how "the media" work that have thus far predominated in the debate on the Europeanisation of public spheres.

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Chapter 4

The European Convention as Communicative Environment: The challenge of multilingual deliberation[*]

Chris Longman
University of Exeter

Introduction

This paper analyses the political and institutional aspects of the 'language regime' of the Convention, of how the challenge of political communication and constitutional deliberation in the context of linguistic diversity was managed. The question of language use (and of the systems in place to facilitate communication) is of crucial importance to the understanding of political relations in a multilingual environment because politics is, at its heart, a language-borne process. Language is the medium of political life. Communication, as expression, debate, negotiation, deliberation, exchange and influence, is central to political activity. However, language does not simply have a communicative function in politics, it is also one basic marker of political group identity, and has been the cultural foundation of many nationalist movements (Wright 2000; Barbour and Carmichael 2002; Joseph 2004). Furthermore, the language policy of a particular state or political system (as well as the policies that determine language use, such as education policy) impacts upon the ability of different language communities within that system to participate in the various spheres of social, economic and

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[*] This paper will also appear in J. Schönlau, M. Aziz, D. Castiglione, E. Lombardo and C. Longman (2007, forthcoming) *Constitutional Politics in the EU*, Basingstoke: Palgrave Macmillan.

public life. Thus, language regimes can promote both equality and inequality, and language repertoires give or deny access to power (Mamadouh 1999).

The operation and success of the Convention greatly depended on the ability of political actors to engage in political communication, and language diversity posed a clear problem in this respect, a problem exacerbated by the different functions that language has within the political domain. Language, as outlined above, is central to politics in terms of being a means of communication, a means of cultural identification, and a means of control, influencing the balance of power between individuals and groups, and it is important to bear this in mind when analysing the language regime and practices of the Convention in order to assess whether trade-offs between functions compromised democratic norms.

The EU challenges the historical assumption of modern politics, as supported by J. S. Mill in one of the core texts of modern liberalism (Mill 1865, Ch. 16), that a linguistically integrated public sphere (including the political elite) is necessary to provide equality of opportunity, and to provide congruence between these communication, identity and power relations. However, the EU challenges this one polity-one language model by seeking to be a multilingual democratic polity, with communication and power being mediated through language services (providing translation and interpretation), and identity constructed through the recognition of diversity.[1] The EU has established a highly ambitious language regime which emphasises its assertion to be much more than just another international organisation (Kraus 2000). With the development of a more integrated legal system and common political institutions, the increase in cross-border decision making and a commonality of interests and experiences across countries, it is clear that the EU has developed a definite political dimension, which needs to be sustained by certain forms of democratic legitimacy. By including all member state languages as official and working languages, the EU is laying a claim to legitimacy by making collective decision-making accessible to all citizens.

The Convention, which was mandated as an open forum for constitutional deliberation, debate, and consultation, clearly aimed to enhance this legitimacy by exposing the mechanics of treaty reform (previously an opaque intergovernmental bargaining process) to the scrutiny of citizens, civil society and national parliaments. This greater transparency could only be facilitated by the provision of information and records of proceedings in all the official languages of the Union. Although the Convention was not legally obliged to

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[1] In this it offers a sharp point of contrast with International Organisations such as the Council of Europe or the UN with their highly restrictive language regimes.

operate under the EU's 'normal' language regime,[2] from the Laeken Declaration on, it was made clear that a similar multilingual regime would operate during the Convention, and that in being supported by an EU secretariat normal EU working practices would mainly apply. Thus the instrumental communicative imperative would be met, without sacrificing national identifications, indeed enhancing the Union's claim to an identity based on the respect for diversity. Furthermore, power relations, being mediated through translation and interpretation services, would not favour one language group over another.

However, there are clear practical and normative challenges to this type of language regime, which have been increasingly obvious in the EU institutions for more than a decade, and which became apparent during the Convention. The temptation to cut through the Gordian knot of linguistic complexity with the increased use of a restricted repertoire of working languages, or even with a lingua franca such as English is clearly high (Ammon 1994; Wright 1999; De Swaan 2001; Julios 2002; Phillipson 2003), thus raising the question of whether there is an insuperable tension between the desire for equality between languages, fairness, respect for cultural diversity, and the avoidance of language disenfranchisement (Ginsburgh and Weber 2005) on the one hand, and efficiency, cost-cutting, and a desire to establish a communicatively integrated political environment on the other.

The objective of this paper is to discuss and analyse the tension within the Convention between the needs of communicative efficiency (which tended towards the increased use of a limited number of working languages), and the needs of identity recognition and the avoidance of linguistic marginalisation and disenfranchisement (which tend towards the maintenance of full multilingual service provision). The fundamental question is whether the Convention reconciled its drive for an integrated, deliberative forum with its linguistic diversity.

The paper starts with a brief overview of the different linguistic/communicative contexts that are apparent both in the general workings of the EU and in the specific case of the Convention. The discussion then concentrates on the language

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[2] The EU language regime was set out in the very first Regulation of the Council of Ministers in 1958, which established a system in which each member state's official language is also an official and working language of the Community. It has remained fundamentally unaltered since, despite successive enlargements, which have widened membership from six to twenty-seven countries, and from four to twenty-three official and working languages. A language regime designed for a relatively small international entity with limited competences now applies to an extensive polity characterised by intensive interdependence.

regime of the Convention, first as prescribed by the Laeken Declaration and the Rules of Procedure drawn up by the Convention itself, and then as it actually operated, and diverged from the prescribed ideal. The implications of this difference are then explored, and the views of *conventionels* themselves about the language regime are presented and considered.

Communicative contexts in the Convention

Before moving on to discuss the prescribed and actual language regimes of the Convention, it is necessary to outline the different domains of institutional communication in the EU. It is possible to identify 3 distinct language contexts: the use of language by officials internally within the various secretariats (what it will be referred to as the *'official'* domain); the communications between the EU institutions and citizens (the *'civic'* domain); and the formal and informal interactions between politicians within and between the institutions (the *'political'* domain).

With regard to the first context (use of language within the secretariats), although the EU language regime as outlined in Article 1 of Regulation No. 1, 1958 defines all official languages as being equivalent to working languages, in practice there is a difference between 'working languages' at the political level and 'working languages' at the official/secretariat level.[3] In general, within the EU institutions, the secretariats use English and French as working languages with nearly 90% of all Council and Commission documents being drafted in these two languages.[4] This regime was continued at the Convention where, despite the range of nationalities working in the Secretariat the assumption was made that they would work on the same basis as the institutions: the 'unspoken rule of working in English and French'.[5]

With regard to the second context, the 'civic' domain, Articles 2 to 5 of Regulation 1/58 prescribe the language regime as being one where all official languages are used. Clearly, a polity which legislates and makes decisions that

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[3] Article 1, Regulation 1/58 at the time of the Convention (as amended following subsequent enlargements): 'The official languages and the working languages of the institutions of the Community shall be Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish.'

[4] Figures for first drafting of documents in the Council and Commission were as follows in 2001: Council (2001): 59% in English, 28% French; Commission (2001): 57% in English, 30% in French. English is rapidly becoming the principal drafting language in both institutions. The proportion of English to French has changed radically over the past decade or so. In 1997 the proportion in the Commission was 45.3 % English to 40.4% French. In 1986 58% of Commission first drafts were in French. (Sources: European Commission Translation Service 1999: 11; Assemblé Nationale 2003: 63.)

[5] Source: anonymous EU Council Secretariat interviewee.

affect the lives of its citizens must provide these laws in a language that is understood in order to be perceived as a legitimate authority. There is thus a highly restricted language regime in the 'official' domain in the EU, but full multilingualism in the official languages where relations with citizens and member states are concerned, the 'civic' domain. The Convention, although strictly speaking not bound by the rules of Regulation 1/58, reflected this ideal of full multilingualism for its public face, the web-site, with all official CONV documents being produced in all 11 languages.[6]

The third context is that of communication within the political domain in the EU, for example by MEPs, member state ministers in Council meetings, and within the College of Commissioners. The latter is a different case from the European Parliament and the various Council formations in the Council of Ministers; Commissioners are appointed, not elected, and may therefore be expected to work in languages other than their own.[7]

The situation for MEPs and Ministers attending the Council is different, and much more akin to the membership of the Convention. The actors in these contexts are elected politicians who should not be debarred from office nor restricted in their negotiating capacity because of limited linguistic ability outside their own mother-tongue. The political class at the European level may thus expect to be able to work in their own language, and it is *this* meaning of 'working languages' that Article 1, Regulation 1/58 is referring to, rather than the internal language regime of the officials in the various Secretariats.[8]

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[6] However, as will be discussed below, there were many instances where a more restricted language regime operated (for example, contributions from civil society and amendments were not translated). Also, CONV documents were drafted in either English or French, and thus these language versions appeared on the web before those of other languages. Indeed the Secretariat had to make a delicate decision about whether to hold back the English and French versions and release them at the same time as the others, or whether to send the English or French versions out first and the rest as and when they were ready. The latter option was chosen on the pragmatic assumption that if the English and French versions were issued early most people in the Convention, and indeed in the wider public sphere, would be able to read them.

[7] In fact the College has three working languages, English, French and German (McCluskey 1998); and documents for the weekly Commission meetings 'have always to be available in the three working languages' (ibid. p.6). This is not to say that Commissioners are unable to speak in their own languages, but rather that a restricted regime operates where much reading material (as well as a great deal of oral interaction) is in the three dominant languages, and especially in English and French.

[8] Perhaps it would be more appropriate, in order to avoid confusion, to describe the 'working languages' in the context of their use by the officials / secretariats of the EU as 'procedural languages', 'vehicular languages', 'drafting languages', or 'in-house languages'.

The prescribed linguistic regime of the Convention

The object of this section is to discuss the linguistic regime of the Convention, not what the Convention might have to say about the wider language regime of the EU Institutions. In fact, it was not within the remit of the Convention to discuss the latter, and the issue was not discussed formally.[9] The Convention brought together 28 state nationalities, potentially bringing 23 recognised official languages (see Table 1).[10] However, from the start, as outlined in the Laeken declaration, the Convention would 'work in the Union's eleven working languages.' Thus although the ten applicant states on track to join the EU in May 2004 (along with the three other applicant states, Romania, Bulgaria and Turkey) were invited to take part in the deliberations, they were not included in the language regime, and thus were not provided with the language resources of translation and interpretation.[11]

Table 1: Official languages of the EU (11), and applicant state languages (12)[*]

EU-15 languages	Applicant state languages
ES – Spanish	BG – Bulgarian
DA – Danish	CS – Czech
DE - German	ET – Estonian
EL – Greek	HU – Hungarian
EN – English	LT – Lithuanian
FR – French	LV – Latvian
IT – Italian	MT – Maltese
NL – Dutch	PL – Polish
PT – Portuguese	RO – Romanian
FI – Finnish	SK – Slovakian
SV - Swedish	SL – Slovenian
	TR - Turkish

[*] At the time of the Convention

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[9] There were, however, contributions that did try to open the matter of including references to the protection and promotion of linguistic diversity for debate, such as the Europa Diversa contribution, see:
http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0300_c_en.pdf
and those from the European Bureau of Lesser-Used languages (4 contributions)

[10] 24 if Irish as a treaty language is included. However, Irish was not considered as an official and working language of the Institutions of the Union at the time, and therefore was used to produce a final draft and only one official Convention document (CONV 848/03) on projected changes to Parts III and IV of the DCT. Irish became a full official language of the EU in January 2007. A further comment should be made here: obviously regional and minority languages were not included in the language regime as they are not given the status of official and working languages of the EU Institutions.

[11] It should be noted that the terms translation and interpretation are used in very specific ways in the EU: 'translation' refers to written work, and 'interpretation' refers to oral–aural communication.

The working methods for the Convention, which included stipulations on how the language regime would operate, were first set out in the draft rules of procedure (CONV 3/02), but taking account of suggestions by members of the Convention these methods were updated into the document CONV 9/02. It is interesting to note that a change was made to the language regime between these two documents, in that the first referred to oral reports being made to the European Council, whereas the second document replaced this with a commitment to make summaries and verbatim records of plenary meetings generally available, thus increasing levels of transparency, and providing *conventionels*, citizens and civil society with a clearer record of proceedings. The full working methods regarding language issues as set out in CONV 9/02 are shown in the box below.

CONV 9/02

Article 6
Conduct of meetings
2. The meetings of the Convention shall be held in the eleven languages of the European Union with simultaneous interpretation.

Article 12
Notes and verbatim records of meetings
A summary note shall be circulated to members (full and alternate) and observers of the Convention by the Secretariat after each meeting. A verbatim record of the interventions made during the meeting in their original languages will also be made available.

Article 13
Translation of documents
1. The Secretariat shall provide to the members (full and alternate) and observers of the Convention, in the eleven languages of the Union, the following documents:
      (i) documents issued by the Chairman or the Praesidium;
      (ii) written proposals for modification to the final texts from full and alternate members;
      (iii) summary notes of meetings of the Convention.

2. The Secretariat shall forward to members (full and alternate), and observers of the Convention, and post on the website, in the languages in which they were sent to the Praesidium, documents from:
   (i) members (full and alternate) of the Convention;
      (ii) institutions and organs of the Union; and
      (iii) observers.

3. The Chairman may exceptionally ask for the translation of documents for the Convention other than those listed in paragraph 1.

It will be seen below that two of these rules were not strictly adhered to, or rather, that the interpretation of these rules was such that a more restricted language regime would operate than was immediately apparent.

The regime was slightly enhanced to reflect the disappointment of some representatives of the applicant states that they could not use their own languages, and a provision was made (CONV 18/02) for members from applicant countries 'to address the Convention in their own language, with translation (sic) (by an interpreter provided by the speaker) into one EU language (and subsequently by the usual interpreters into all eleven languages' so long as 48 hours notice was given, and provided that the applicant states covered the financial costs themselves. This would only operate one way, from applicant state language into the 11 EU languages, not from EU languages into applicant state languages (see Figure 1). The relay language was normally English or French.

Figure 1: Applicant state interpretation scheme for Convention Plenary sessions

'Relay'   *Other 10 EU languages*
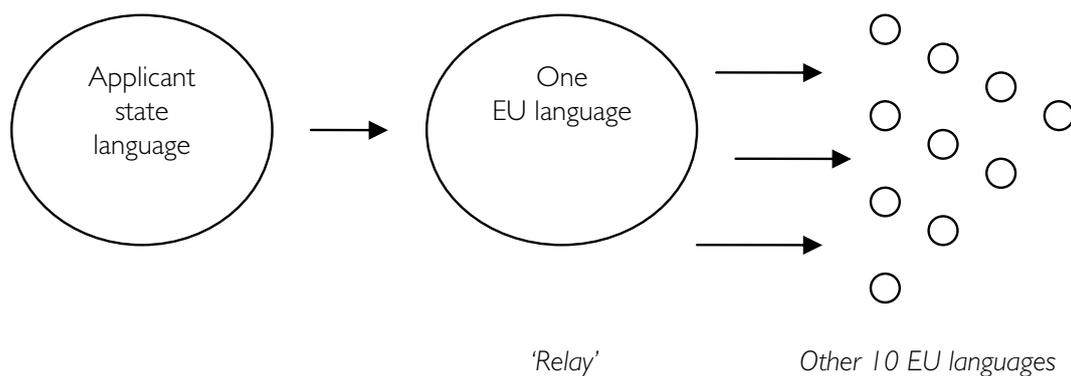
Many *conventionels* commented on this, with many feeling that this was unfair. One Polish representative made the point that 'we were too poor to provide translation' (*interview:* Grabowska 05/06/2003). Alois Peterle, the candidate countries' representative on the Presidium, made the point that it would have been better if the Laeken Declaration had included candidate country languages from the beginning (*interview:* Peterle 04/04/2003).

The discussion above focuses primarily on the political and civic domains, with the regime as it affected how the *conventionels* were able to communicate with each other, and also how the deliberations would be presented in a transparent way to the world via the CONV documents and the web-site. As far as the 'official' domain is concerned, the Convention was assisted in its work by language support staff, including a Secretariat, drawn from a variety

of European institutions, 11 of whom were drafters.[12] The language support services were provided from a variety of sources, though the majority of the interpretation work (oral/aural) was undertaken by the Joint Interpretation Service of the Commission (SCIC – DG Interpretation) with help from European Parliament interpreters during Plenary sessions, and the translation work (written work) was mostly done by the Translation Service of the Council Secretariat.

The language regime in practice

To summarise the above: all meetings of the Convention were to have interpretation into and out of all 11 then current official languages of the EU; there would be verbatim (untranslated) records of meetings with summaries in the 11 languages provided, and uploaded onto the web-site; all CONV documents and amendments to final texts would be translated; contributions from *conventionels*, observers and civil society via the Forum would be published but not translated; and language support would be provided by the language services of the EU.

However, from the beginning it was clear that this prescribed regime would be challenged by financial/budgetary and personnel constraints, time restrictions in terms of providing translations in short time-spans, considerations of social communication (interpretation not being available in more informal settings), and political compromise (politicians not availing themselves of their right to speak their own language in order to reach others more directly, not via a translation and interpretation).

Interpretation

Full simultaneous interpretation in the eleven languages was provided in the Plenary sessions. However, the regime adopted in the Presidium was much more restrictive, reflecting the sensitivity felt about the deliberations within the conclave. Interpreters were not encouraged through the first half of the

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[12] The drafters, or *redacteurs*, basically prepared all substantive input coming from the Secretariat and going first to the Presidium and then on to the Plenary. During the first phase of the Convention the drafters had to draft the background papers and information notes on the various issues on the agenda and to advise, with and for the Secretary General, on tactics and strategy. During the second, working group phase, the drafters became the secretaries for the groups and discussion circles, acting relatively autonomously, helping and advising the chair of each group on working methods (which were the responsibility of each group). Thus mandates were drafted, agendas worked out, and reports of the work of the group drafted and carried through discussion and adoption by each group. During the third phase, work was concentrated on the drafting of the final output, the Draft Constitutional Treaty.

Convention because Giscard preferred to meet in private without collaborators or interpreters, with the consequence that the default languages that were used were French and English. However, one Presidium member, Gisela Stuart, National Parliament representative, German born but representing the UK, could not speak French. She was provided with a simultaneous 'whispering' interpreter. During the later stages of the Convention, when specific Draft Treaty articles were being discussed, a fuller interpretation service was provided, with English, French, German and Spanish interpreters present. However, in June, when the final stages were being reached the President decided to return to the private meeting format, without interpreters.

The second stage of the Convention was characterized by the working groups. The interpretation of CONV 9/02 was such that it was deemed not to cover the language regimes to be used in the working groups. (The word 'meetings' in the CONV 9/02 document was read as meaning plenary sessions.) The working group language regimes were thus much more restrictive, being limited normally to two or three languages. The 11 groups operated as 'mini-Conventions' on their particular topic, and were composed of 30–35 *conventionels*. The working methods of each group were determined by the Chair of each group, advised by the members of the Secretariat. It was made clear by the Secretariat at the outset of this phase that it would not be possible to ensure a full interpretation regime.[13] English and French were automatically provided, then the formula was read out at the first meeting to the effect that it was hoped that the members would understand why, and that further interpretation would only be provided if absolutely necessary.[14] It was then stressed that in this latter situation it would be easier to offer interpretation *into* that speaker's language rather than *from* his /her language into other languages. Thus, most working groups operated principally in English and French, sometimes with German also being used, and occasionally Spanish or Italian when a member was completely unable to function in the principal working group languages. Most members accepted this regime with good will in a pragmatic way, though there were many complaints from German members, and indeed from the German Government. However, the Secretariat took a firm line on this, and sought to enforce the line that interpretation into languages other than English or French would only be done according to real practical need.

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[13] The Secretariat had clear instructions from their Secretary General, Sir John Kerr, to this effect.

[14] For example, see CONV 164/02, summary of working group II meeting 25th June 2002, point 4: 'Working languages. It was agreed that, purely as a result of technical constraints, interpreting could only be provided in French and English for working groups. If a group member indicated an imperative need to speak in another language, the Secretariat would explore the practical possibilities.'

Translation

The official documents produced by the Convention (those with the CONV prefix) were translated into all 11 official EU languages. The documents emanating from the working groups, however, were mostly in either French or English or both. As stated above, within the 'official' domain of the Commission and Council secretariats the normal working practice is for drafting to be done in English or French (and very occasionally in German). Consequently the Convention Secretariat, drawn from the Council Secretariat was simply following normal procedures for EU officials. The consequence of this is that English and French versions of texts are usually made available before those of other languages, when indeed those other languages are catered for. However, great efforts were made by the Convention Secretariat and language services to translate the official CONV documents as swiftly as possible for distribution and inclusion on the Convention web-site.

Amendments proposed by *conventionels* were not translated because the sheer number of them outstripped the Secretariat's ability and budgetary allowance to do so. This appears not to satisfy the stipulation in CONV 9/02 Article 13.1.(ii) 'The Secretariat shall provide to the members (full and alternate) and observers of the Convention, in the eleven languages of the Union, the following documents: written proposals for modification to the final texts from full and alternate members.' The consequence of this was that the majority of amendments to the treaty drafts were put forward in English and French, the most widely understood languages with in the Convention. As an example of this we can look at tabled amendments to 3 different articles from Part 1 of the Draft Treaty (see Table 2).

Table 2: Languages in which amendments were tabled

	Article I-4	Article I-15	Article I-43
	40 proposed amendments	38 proposed amendments	23 proposed amendments
English	25	24	11
French	8	6	7
German	3	1	3
Italian	3	2	0
Spanish	1	1	0
Danish	1	0	0
Portuguese	0	0	1

Similarly, the contributions sought from outside the Convention (from civil society, the social partners, the business world, non-governmental organisations, academia, etc.) were left in their original language. This at least did satisfy the stipulations laid out in CONV 9/02 Article 13.2.(iii), but the outcome of this was that the majority of contributions were made in English and French, in order to reach the widest possible audience. To illustrate this, we can look at those contributions sent by socio-economic actors (as categorised on the Convention website). There are 93 contributions, some in more than one language. 69 are in English, 33 in French, 23 in German, and 5 in other languages. [15]

The final output of the Convention, alongside the documents mentioned above, was of course the Draft Constitutional Treaty (DCT). The majority of drafting work on this document had been in French, with some work in English, though projected changes were translated into the other languages in the final stages of the Convention.[16] Because the DCT was to a great extent updating and rationalising previous treaties, there was not the need for a radical overhaul of the language used. Furthermore, there are huge language databases that the EU Secretariat can rely on to provide linguistically accurate versions in different languages. However, there were moments when new concepts emerged with consequent problems. One example was the term *compétances* (in the French), which was a new departure for the EU to include in a treaty. There was debate about whether it should be translated into English as competences or powers. Such subtleties can be intensely political.[17] A further problem was the change of name for the Court of First Instance (which had ceased to be such a court a long while back: the English 'High Court' translated badly into German.

Ziller (2003: 79-85) is highly critical of the translations of the final Draft Treaty, pointing to instances of infelicitous language use, especially in the English version (for example the use of eurospeak such as 'Council

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[15] (Source: http://europa.eu.int/futurum/forum_convention/doc_3_402_en.cfm [Convention web-site, Forum section]). We can see here (and with the amendments) the operation of what Philippe Van Parijs refers to as the 'maximin' principle, maximising minimal linguistic competence, i.e. using a criterion of minimal exclusion in order to reach the widest number of people (Van Parijs 2007).

[16] The Chairman of the Convention, Valerie Giscard d'Estaing, was instrumental in keeping the French version to the fore, and was extremely interested that the French version should have a certain stylistic purity. He even suggested sending the final text to the Académie française for revision, 'and to academies in other countries'. The problem was that there are few language academies in other countries to send the draft to (Ziller 2003: 85).

[17] 'Competence' in English also has the connotation of ability, which is somewhat different from having the power or right to do something. Eventually the word 'competence' was opted for. See DCT Part I, Title III, Articles 9-17. (TCE Arts 11-14)

formations' (Article 23 DCT), or the confusion of 'chair' and 'president' in Article 21. However, these criticisms are a little unjust, considering that it was decided that because this was simply a draft which might be altered at the upcoming Intergovernmental Conference, it would not go through the 'Jurist-Linguist' process in which specialist lawyer–linguists check the accuracy of the text and translations to ensure legal linguistic coherence. The final text of article 23 DCT (now Article I-24 TCE) is much more succinct and has been clarified greatly, and article 21 DCT (I-22 TCE) is consistent in its use of the title 'President'.

Near the completion of the work, Giscard made the pronouncement that the final Draft Constitution would be made available in all official languages *plus* those of the applicant states, which took the Secretariat a little by surprise.[18] Giscard had the right to do this under CONV 9/02 art. 13, paragraph 3, but the Secretariat had problems in ensuring that sufficient translators of quality were able to do the job, and there was dissatisfaction at the quality of the final printed versions of the DCT.[19]

All languages are equal, but some are more equal than others

The above description of the official bases of the Convention language regime and its subsequent development through practice provides us with the material to now raise certain questions about whether this was the most efficient and equitable system available.

As is common with so many aspects of the workings of the EU, there is a tension between idealism and pragmatism. The language issue is a clear example of such a tension, and the desire to be inclusive and to enable all representatives from (current) member states to speak their own language in all Convention meetings, as set out in CONV 9/02, was clearly overly optimistic. Equally, the desire for all citizens and members of civil society to be fully engaged (which implies that they would be able to communicate with ease with the Convention) was perhaps idealistic when one considers the horizontal stratification of European society into different language communities. There is bound to be a point when the quantity of work and

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[18] Speaking of the Constitution: 'Il a été établi seulement en trois langues à ce stade des travaux, qui sont l'anglais, le français et l'italien, langues de la présidence. Mais les traductions sont en cours dans toutes les langues de l'Union, y compris les langues des nouveaux membres.' (Giscard 9th July 2003)
[19] A point made by more than one anonymous interviewee.

the numbers of professionals needed to service such work, not to mention the financial considerations, reaches a limit. It would not be possible to include provision for all language communities in Europe, including applicant state languages, regional and minority languages, and languages of recent immigrant communities. A line has to be drawn somewhere, for practical and financial reasons. However, the bottom line with the EU language regime more generally (and this could be said of the Convention equally) is that official state languages are provided for because it is assumed that even though this may not be everyone's mother tongue, each citizen ought to be able to speak a language of such status. Therefore provision should be given, in a polity that seeks democratic legitimacy and the widest possible social acceptance, to facilitating participation in, and comprehension of, political deliberation in a language one understands and can communicate in effectively. The question must be asked with reference to the European Convention whether this was achieved.

There are two obvious points to raise in this respect: one relating to lack of provision for representatives from applicant states; and the other relating to the dominance of English and French in both written and oral communication in the Convention. In both these cases we could refer to a situation of 'language disenfranchisement' (Ginsburgh and Weber 2005): for applicant state representatives unable to communicate in their own languages (except in extremely restricted circumstances); and for those speakers of languages other than English and French (and even for those speakers of English or French who were not competent in the other language)[20] who were obliged to speak, listen and read in a language other than their own, in a political forum with constitution-making objectives.

The status of applicant state representatives is interesting, in that their standing as non-members of the then current EU configuration was clearly the barrier to their being afforded equal rights as existing member states. However, the Convention was an exercise mandated to explore the means to reform the nature of an enlarged EU in which the acceding states would be full members. Thus the inclusion of these states in the Convention process, but as members who should not prevent consensus being reached, and whose languages would not be represented, may belie a certain arrogance on the part

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[20] For example Gisela Stuart (2003: 21–2), who was unable to speak French and felt sufficiently aggrieved by the situation to complain about it in her Fabian Society booklet, 'The Making of Europe's Constitution': 'It was not unusual for texts to arrive late and only in French. Whenever the President expressed his irritation at my inability to conduct legal negotiations in French, I offered to switch to German. He never took up my suggestion.'

of the current member states who agreed to such a regime in the Laeken Declaration.

However, it is the point about the more general restrictions imposed on members of the Convention that potentially has wider implications. The inequality with which the applicant state representatives were treated was mostly due to the anomalous position of negotiating the future of a polity of which their countries would be full members while still being outside the club, whereas the issue of restrictive language practices through the privileging of English and French is a more general issue, as it will be argued below.

The expectation that Convention members should operate in a restricted language regime with little or no support appears to compromise certain tenets of democratic equality regarding political deliberation and the working practices of political representatives: that of equal and simple access to information; that of promoting equality of capacity to evaluate and decide upon matters; and that of the provision of a public forum where facts and opinions can be shared without privileging one set of actors over another. Within the Convention, information provision was linguistically asymmetric, as were the capacities of the members to understand and evaluate the issues. Furthermore the working group fora certainly privileged English and French native speakers over the rest. This linguistic asymmetry would manifest itself in terms of comprehension difficulties, lack of ability or confidence to participate verbally in debate, as well as the time factor in reading documents and preparing for meetings. The outcome would appear to be that native English and French speakers are potentially more active and influential than non-native speakers of these languages in such a situation.

However, it could be argued that given the practical and financial constraints faced by the Convention Secretariat, in terms of simply not having sufficient staff, nor the financial resources to buy in such capacity of the required calibre, there could be no other option. Furthermore, the linguistic capacity of the *conventionels* may have been such that few members were seriously disadvantaged or linguistically disenfranchised. Without specific data on the language competence of individual *conventionels* it is necessary to rely on studies that have been made on subjects not too dissimilar to that in question. Ginsburgh and Weber's analysis of language disenfranchisement which arises if the number of working languages of the EU is reduced, based on figures relating to the linguistic capacity of European citizens in general, suggests that in an English-only environment 45% of the EU population would be

disenfranchised, dropping to 30% if French is added, and 19% if German becomes a third language. Thus a predominantly English/French language regime would leave 30% of the population unable to follow or participate in debate (Ginsburgh and Weber 2005: 281). However, the language repertoires of European elites might be expected to be wider and deeper, a proposal made by Mamadouh and Hofman (2001) in their work on the language constellation in the European Parliament 1989-2004. According to this research, the percentage of MEPs that do not have access to either of these two languages (in terms of conversational skills) declined from 24% in 1992 to 8% in 1998, and then to 4% in 2000. However, a significant number of MEPs are not fluent in one of these languages: 29% in 1993, 14% in 1998, and 10% in 2000 (Mamadouh and Hofman 2001: 4). It should be remembered that MEPs work in a multilingual environment with a history of informal communication in English and French, whereas the majority of the *conventionels* were representatives of national governments or parliaments, for whom the working environment would be predominantly monolingual in the national language. Thus we can tentatively assume that the language disenfranchisement of Convention members faced with a restricted English–French language regime would be greater than 4% (Mamadouh and Hofman's suggestion for the EP) and probably less than 30% (Ginsburgh and Weber's proposal for European citizens in general) given that the European Convention drew its members from an educated elite.

Two points clearly need to be made. First, without specific data this conclusion is highly speculative and imprecise, and second, this type of data is highly problematic in that it relies on self-assessment of language ability by the subjects of such research which might be highly inaccurate. However, despite these caveats, it is credible to propose that many *conventionels* were challenged in their ability to perform the task for which they were mandated: to deliberate, consider, discuss, and to debate the future of Europe.

However, the empirical evidence gathered for this paper would appear not to support this hypothesis. Although there was some evidence that members felt that their limited communication skills in a foreign language affected their negotiating capacities, and that their lack of proficiency in either English or French, or both, led to problems of time-management in the preparation for meetings when information was not available in their mother-tongue, the majority of interviewees stated that they felt the system had worked well, and that having to work for part of the process in a foreign language did not hamper them to a great extent. Many explicitly referred to the role of English in this respect: 'With English you can normally communicate with all delegates quite well' (*interview:* Meyer 17/03/2003); 'We are able to speak

with each other mainly in English' (*interview:* Balasz 03/03/2003); ' It is completely satisfactory to speak English' (*interview:* Szájer 16/05/2003); 'English has become very much the lingua franca … in general you get by. In this sense this has become very relaxed' (*interview:* Einem 24/04/2003); 'English is the language' (*interview:* Bruton 04/07/2003). A highly instrumental view of communication was apparent in many comments. When asked if he always spoke Dutch when possible, Wim Van Eekelen responded, 'No, sometimes English. If I raise a blue card I always speak English, for I don't think for one minute people will focus on Dutch' (*interview:* 05/06/2003). Goran Lennmarker made a similar point: 'I have made all my interventions in English. I could speak Swedish, but I don't do it. My job is to convince people' (*interview*: Lennmarker 15/05/2003).[21]

Conclusion: Multilingual deliberation and cultural translation

Most actors from the official/secretariat and political domains of the Convention appear to have accepted the language regime with good grace and understanding as a pragmatic necessity.[22] Given the high expectations of the Convention apparent from the beginning (as shown by the recurrent comparison with Philadelphia), the relatively short time scale (16 months), the range of interests wishing to engage in the process, the number of language communities represented (28 states with 23 official languages), the diversity of constitutional cultures being drawn upon, and the fact that the Convention was running in parallel to the day-to-day running of the EU at a time of great political divergence in Europe (around the issue of the Iraq war), it is surprising that the Convention worked as well as it did. For this to happen, there was clearly a felt need to compromise and not to insist pedantically on absolute equity in all issues. The language regime reflects this pragmatic approach, which understood that to insist on full multilingualism of all official languages as working languages in all Convention contexts would have been financially ruinous and practically unfeasible.

However, as Wright (2000) point outs, language is power: those with mastery are able to be more persuasive; those with less mastery are disadvantaged (*ibid*: 155-6). Mamadouh (1999: 136) makes a similar point: '[a]n agreement on any

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[21] For further discussion on the increasing dominance of the English language in European political life see Phillipson (2003) and Longman (2007)

[22] The only group of people who appear to have resented the dominance of English and French were some of the German members. Indeed the German government made repeated complaints to the Convention President, but to little avail.

working language in any political arena necessarily influences the balance of power between those, individuals and groups, who command the language and those who do not, but also between those with different levels of proficiency'. The paradox here is that the equality achieved by eradicating linguistic difference and constructing a community of communication through the use of an 'international language' at the same time undermines the equality of opportunity for members of such a community who do not have the lingua franca as their mother-tongue. Language, as a political resource, is shared unequally in a forum such as the European Convention, leading to the conclusion that there was something distinctly undemocratic about its workings. However, it is difficult to see alternatives if practical and financial considerations rule out full integral interpretation and translation, and if the political elite are willing to work this way.

Is it possible to draw wider conclusions from the workings of the Convention? There are certainly dangers in trying to extrapolate from the Convention, which was a unique event not bound by the normal institutional rules of the EU, to the functioning of the EU in general. But some tentative inferences may be drawn, especially when considered alongside other evidence concerning the language regime of the EU.[23] The Secretariats of the EU will continue to work predominantly in English and French, with English increasingly used in preference to French (especially since the 2004 round of enlargement). The EU will continue to produce all official legal documents in all official languages, and to communicate with citizens in the official language chosen by the citizen, though there will be an increasing amount of information made available (for example on the EU server 'Europa') only in English and French.

Thus far, *plus ça change, plus c'est le même chose*. However there are further developments in the EU political sphere. It is clear that the provision of translation and interpretation after enlargement to service the needs of political actors within the EU institutions is now a challenge.[24] The Convention has shown that it is apparently acceptable for political actors to work in languages other than their own, and to accept a restricted language regime in certain circumstances with translation and interpretation being

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[23] Alongside sources discussed below, I should mention that the following is also based on interview data, and other studies such as Phillipson (2003) and the Herbillon Report (Assemblé Nationale 2003).

[24] The following EUobserver.com headlines give a flavour of this: 'Translation problems delay crucial EU financial laws' (10/05/2004); 'EU translation service on the brink of collapse' (26/05/2004); 'EU translation problems cost lives, says UK' (28/07/2004); 'EU language bills rocket' (14/1/2005); 'Translation errors in Polish EU Constitution to delay ratification (20/01/2005)

provided only according to 'real need'. It is already apparent in the Council that an increasing number of working group meetings at the political level work without interpretation (i.e. using the *linguae francae* – English and French), and that an intermediate tier is emerging between that of no interpretation and full interpretation, where interpretation is provided on demand with the costs covered by the member state concerned.

A recent Working Document of the Committee of Constitutional Affairs of the European Parliament explores new ways of interpreting the rules of procedure of the EP with regard to language (European Parliament 2004a). This document notes that, 'it is impossible in practice for any of the European institutions to implement unrestrictedly the general principle of full multilingualism' (ibid: 2). The suggestions made appear to echo the pragmatic solutions that emerged in the Convention: full multilingualism in plenary sessions, but 'a more differentiated and pragmatic approach should be possible in the case of all Parliament's other bodies', i.e. working groups and committees, with each EP body adopting its own language arrangements (ibid: 4).[25] The final version of the Rules of Procedure (16th edition – July 2004), clearly show how this has developed into a more flexible language regime:

> Rule 138. 4. At committee and delegation meetings away from the usual places of work interpretation shall be provided from and into the languages of those members who have confirmed that they will attend the meeting. *These arrangements may exceptionally be made more flexible where the members of the committee or delegation so agree.*
>
> European Parliament 2004b, emphasis added.

This more flexible approach which was apparent in the workings of the Convention would favour the emergence of a smaller number of working languages within the institutions of the EU. Many *conventionels* made the point that this was necessary during the Convention, and that it ought to be

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[25] One reason why this issue became so vital to address was that there would be insufficient language service cover for a while after enlargement in all the incoming official languages. There was a procedural problem here in that Rule 139.6 of the EP Rules of Procedure allowed for amendments to be put to the vote *only* after they have been printed and distributed in *all* the official languages. Without this, any member could make a point of order and demand that discussions should be suspended.

the model followed by the EU in general. [26] Joszef Oleksey was of the opinion that '[a]t the beginning the Convention should have used all languages. This is the tradition, it is a symbolic thing. But in the future I think we should choose working languages' (*interview*: Oleksey 16/05/2003). József Szájer thought that '[i]t would be rather better if the other countries would use also a certain number of limited languages' (*interview*: Szájer 16/05/2003). Frans Timmermans was very clear about where this should lead:

> 'I think there is only one real solution to the language problem, and that is to retain all the official languages of the member states as official languages of the EU and then to make a step towards working languages, possibly towards one working language which would logically be English. … Let's be pragmatic'.
>
> *Interview*: Timmermans 04/06/2003

Thus it may be seen that the language regime which emerged in the Convention may be a presage of things to come, and, to a degree, a reflection of emerging practices in the wider EU institutional context. Indeed, Pervenche Berès made the controversial and provocative statement that, 'obviously the Convention worked as the avant-guard of the EU, which means it was nicely and smoothly moving to English. … This doesn't mean that's what I really like, but it is a fact.' (*Interview*: Berès 15/10/2003)

However, it should not be implied that this is a clear or desirable route to take. The point was made at the beginning of this paper that language operates as a medium of communication, identity and power. The instrumental, communicative aspect may favour a subtractive model for a language regime, but the recognition of identity and the promotion of an equitable political environment do not. Furthermore, alongside these strong arguments about symbolic representation and linguistic disenfranchisement, there is a debate about whether language carries cultural assumptions and forms a conceptual filter which may (unintentionally or not) produce political-cultural hegemonies of thought. Language, in this view, is not simply a reflection of reality, but the means by which we constitute reality

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[26] This would not be to say that full multilingualism would disappear. EP plenary sessions, formal Council of Ministers meetings and all communication with citizens and member state governments would still operate under the rule of full multilingualism in all official languages.

and make sense of the world (Phillipson 2003: 108).[27] As Johannes Voggenhuber reflects,

> [t]his touches of course on the language problem in general, but there I think Umberto Eco has indeed found the golden formula: 'the language of Europe is translation'. There you have to see that it is not so much about linguistic translation with generally quite polyglot people, but it is about cultural translations, about the translation of ideas and value systems and language is only a recognition of this achievement. This is of course also to do with the fact that culture of a person or of a country or region or a state themselves can only be transmitted in their respective language, and there are clear hegemonies which are also transmitted by language – cultural and political hegemonies.
>
> *Interview*: Voggenhuber 09/07/2003

Thus, although the Convention language regime, which in many respects was restrictive, was accepted with good grace, and even with some enthusiasm, by most *conventionels*, there are distinct concerns about the implications of accepting the dominance of one or two dominant languages at the elite political level; there are implications for political equity at the elite level, but also implications for how the political processes of the EU are perceived by citizens. As Johannes Voggenhuber says:

> … maybe you can make that clear to people …not so much to the experts, but to the people, that even just listening to foreign languages reminds you of this core task of Europe, to move towards unity by translating cultures, and to maintain those cultures even in unity – to make that a sensuous reality. And if that stops to be sensuously present then it means that a political class is talking to itself at a virtual level about a Europe which does not exist.
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> *Interview*: Voggenhuber 09/07/2003

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[27] For further discussion of this issue, and the 'linguistic turn' in IR and European studies, see Drulák (2003), and Christiansen, Jørgensen and Wiener (eds) (2001), especially the chapters by Marcussen et al, Rosamond, and Diez.

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Mr Wim Van Eekelen, 05/06/2003

Mr Johannes Voggenhuber, Rep. of the European Parliament, 09/07/2003

Chapter 5

Political Roof and Sacred Canopy? Religion and the EU Constitution

Philip Schlesinger and François Foret
University of Glasgow and Catholic University of Mons

Introduction[1]

Between February 2002 and June 2004, the European Union (EU) debated and finalized a new constitution. As constitutions define the nature, identity and scope of political communities, struggles commonly take place over the values and principles they embody. What should the EU stand for? How should it situate itself in history? These questions were at the heart of the controversy about Europe's Christian heritage.

The question of whether Europe can be at least partly defined as a community of values and identity by virtue of its Christian past is a matter of long-standing debate. The process of EU constitution-making gave this matter a new impetus and focus. It raised the stakes significantly because constitution-making is an extraordinary symbolic process in the life of a polity. It is a rarity because it deals with the fundamentals of communal identity and therefore involves stepping aside from routine political life

(Eriksen *et al.* 2005). Constitution-making means devising a framework intended to have significant durability. Because the EU's constitution-making process was a matter of formal, open deliberation, it took place in the public domain. It also brought into public view competition by a range of political actors aiming both to pursue and privilege their interests.

In the wake of 9/11, and contemporary worries about a 'clash of civilizations' between 'the West' and 'Islam' (Barber 1996: Chap. 14; Huntingdon 1998 passim; Armstrong 2001; Buruma and Margalit 2004), claims to religious identity have taken on new salience both internationally and within states. As Jean-Paul Willaime (2004: 75) puts it so succinctly: 'Religious geography is also a political geography.' Thus, to think of Europe as a predominantly – if not exclusively – Christian territorial expression takes us straight into claims about how we should imagine belonging to an emergent political community, its privileged version of history, and who might be its acceptable and legitimate members. However, as we shall show, the proposition of a Christian identity for the EU is far from cut and dried. Not only is Christianity itself still riven by diverse confessions and their related historical antagonisms, but the EU's space is also not exclusively Christian. From the point of view of religions, European history can hardly be written without acknowledging the centuries-long inter-play between Christianity, Judaism and Islam.

Contemporary argument about the EU's communities of value and belief, collective identities and memories, then, has been given a new focus by the EU's constitutional debate.[2] The debate about the role of Christianity in the EU is interesting, we would suggest, for three reasons. First, it simply demonstrates the continuing importance of the religious fact and shows how the churches are redefining their role. Second, the debate about Christianity has wider implications for the continuing discussion about 'Europeanness' and its limits. The claims made regarding Christianity's constitutive role in European identity have been managed in the constitutional process but they are not now going to disappear. Third, by making such claims to a privileged role in the articulation of collective identity and memory, and by having them debated seriously, organized Christianity has established itself as an important, publicly recognized, legitimate interlocutor in the institutional space of the EU.

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[2] Moments that are extraneous to the constitutional debate proper have been shaped by its course and articulation. These have triggered a wider airing for the religious dimension of the EU, both in the media and among political circles. Two cases in late 2004 were the rejection of Rocco Buttiglione's nomination to the European Commission and the heated arguments over Turkey's candidature for EU membership.

The debate on secularization has shown that, instead of being a source of collective norms and values, religion is increasingly operating as cultural system through which groups may express their particularity. It is also a resource for adaptation or resistance to change. Can religion play a role in the legitimation of the EU by shaping a public sphere and a collective identity and constituting 'Europeanness' at a supranational level?

The European constitutional process was supposed to accelerate the growth of a European political community by producing thicker relations between citizens and developing their sense of belonging to a wider collectivity. However, our analysis of the question of religion in the context of the Convention on the Future of Europe suggests that well-established national boundaries continue to prevail in shaping collective interpretations and actions. The constitutional process, rooted in ambitions to reshape identities and memories, has come up hard against the limits of an intergovernmental system.

The Political Uses of Religion and Secularization

Latterly, in the social sciences, the classical focus on the role of religion in the construction of a political order and popular mobilization has been enlarged to encompass the study of how religion may be used as a way of expressing an identity, status or claim. From this standpoint, religion is less a source of values than a resource for communication and self-assertion. On the one hand, religion may be conceived as a constitutive macro-social force that provides a belief-system and an institutional framework; on the other hand, we need to consider how religion is used by social actors.

Clifford Geertz (1973: 125) has proposed that we approach religion as a 'cultural system', whose mode of production, internal logic and effects we need to understand. From this point of view, religion is one system of beliefs among others, a means to handle the irreducibly irrational domain which each social order has to manage in its own specific way, not least because it is part of the political game. Religion offers a way of imposing a rationalized order on the irrational. However, we cannot simplistically counterpose religion to secularism and suppose that the latter may be identified with reason. Nor can religion be reduced simply to a normative body of thought for the attention of theologians, or indeed viewed as just another system of domination in need of sociological scrutiny and critique (Willaime 2004: 267–9). Rather, the persistence of religion in diverse forms in different kinds of social order prompts us to think of it as an inherent part of collective life.

Roy Wallis and Steve Bruce have distinguished usefully between 'substantive' and functional' approaches in the sociology of religion. Substantive definitions are concerned with what religion is. Wallis and Bruce (1992: 10–11) propose the following characterization:

> Religion for us consists of actions, beliefs and institutions predicated upon the assumption of the existence either of supernatural entities with powers of agency, or impersonal powers possessed of moral purpose, which have the capacity to set the conditions of, or to intervene in, human affairs. Further, the central claims to the operation of such entities or impersonal powers are either not susceptible to, or are systematically protected from, refutation.

Functionalists are interested in what religion does. For instance, how it addresses the ultimate questions of life and death, the elaboration of moral conduct, the answers given to the meaning of the human condition (Wallis and Bruce, 1992: 10-1). To the extent that a functionalist approach focuses our attention on the role of social actors and institutions, it is highly pertinent to our argument here. True enough, functionalism must be used with due caution as it risks confusing religion with other grand narratives (such as political ideologies) that also address questions of goal and purpose. Moreover, political discourse, like the religious, is often produced in ritualized settings (such as parliamentary debates or press conferences) and it can also be used to call on loyalties and to mobilize publics. So it is analytically necessary to find criteria that distinguish the religious from other world-views. It is at this point that substantive definitions, focused on references to the supernatural, become useful.

Our aim here is to assess the contemporary workings of the religious dimension in the EU, noting how its meaning and form have shifted. This means that we have to take on board present-day debate on secularization.

The idea of the 'disenchantment of the world' has been revisited frequently in the past century. The social sciences can hardly ignore religion when assessing the balance sheet of modernity. On the contrary, the persistence of the sacred in all kinds of society has been emphasized and its return, with a vengeance, has been noted. The intellectual journey of the sociologist Peter Berger (1999) is an example. Berger was a pioneer of the secularization thesis but came to question it radically, in particular the idea that religion was going to disappear. He now conceptualizes the issue in terms of changes in belief–systems that have led to de-institutionalization. Berger emphasizes the

alternatives to the process of rationalization provided by anti–secular reactions now under way, whether as religious sub–cultures or through the adaptation of traditional beliefs to the demands of modernity.

Berger suggests two main reasons for the social rejection of secularization. First, religion continues to offer a privileged answer to the search for meaning; second, it can also often provide a resource for social and political conflict, not least when shaping opposition to secular elites that pursue modernization. Furthermore, Berger relativizes the phenomenon of secularization when he points out that it has only really been of quantitative significance in Europe – a point of some relevance for what follows.

Those arguing for the secularization thesis do not necessarily question the persistence of religion. Wallis and Bruce (1992: 12-5) show that the view that modernization accompanies a decline in the social significance of religion needs to be put in the context of three constitutive features of modernity. First, social differentiation strips the churches of some of their traditional social or educational roles and sets them in competition with other, more specialized institutions. In parallel with this, the development of specific identities linked to new social classes renders less plausible the idea of a uniform human community subject to a grand design, encouraging diversification in the search for the good. Second, societalization heralds the displacement of communities by societies, in Tönnies' sense of these terms. This results in systems that increasingly rest on common incentives and constraints to shape individuals' behaviour as opposed to the inculcation of a shared vision of the moral order. Consequently, it is less and less likely that a homogeneous religious body of practice and belief could exercise a general influence on society. Finally, rationalization induces change in the modes of thought and action. A secular universe becomes open to rational and empirical exploration.

Social differentiation, societalization and rationalization together bring about secularization, but only when religion fails to perform other functions than that of mediating the sacred. But religion does do other things. First, it can play a role in cultural defence by providing resources with which to protect national, ethnic, local or group cultures. Second, religion may also operate as an instrument of cultural transition, offering a framework through which new identities can be negotiated, sustaining the meanings and values of people undergoing change. In such contexts, the churches are considered to be both interpreters of the new and also anchors of stability (Wallace and Bruce 1992: 17-9).

Yet such social roles do not hide the decline of religion's traditional function. As Wallis and Bruce show, the development of new beliefs does not compensate for the erosion of institutionalized religious belief. Contemporary practices are resolutely centred on the individual and require a minimal investment – which marks the difference between those who believe and those who don't. Religion, far from being about to disappear, has shifted ground from the collective to the individual level. Even when its hold appears to be strong, it is no longer the supreme source of social orientation. Where it survives as a general practice, it is at the price of a weakening of its religious content properly understood, and involves an ebbing of the supernatural dimension. Nevertheless, religion has the potential to be reactivated at a time of crisis (Wallace and Bruce 1992: 21).

The new uses of religion are elaborated through communication and identity. To affirm one's belonging to a faith is a way of placing oneself within a distinct community, of being written into a specific lineage, while claiming the status of participant in the expressive and deliberative processes of a pluralistic democracy.

The question of how religious belief and secular democracy can be reconciled in a liberal constitutional state has recently agitated Jürgen Habermas (2005) whose thinking was honed in debate with Cardinal Joseph Ratzinger, later to become Pope Benedict XVI.[3] As we shall show, the churches have sought to become recognized interlocutors of the EU's institutions as well as shaping its sense of history and identity. Habermas has argued that religious believers can indeed make a cognitive contribution to political debate and public life. He therefore opposes the kind of secularism that would deny such recognition, while at the same time granting precedence to the exercise of secular reason. The implication of this 'post-metaphysical' stance (as Habermas terms it), in which faith and knowledge are firmly distinguished, is that religious arguments need to be 'translated' into 'generally accessible' terms to count in the political public sphere. Religious bodies must acknowledge the need for 'translation' as this gives them 'the chance to be taken up in the agendas and negotiations within political bodies', the EU included (Habermas 2005: 12–3).

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[3] Interestingly, Habermas has acknowledged the specific contribution of Christianity in Western philosophy and in particular the values that religious communities bring to a society in which market individualism and an uncertain international order are undermining solidarity. He argues that a post-secular society should recognize both the limits of secular and religious modes of thought and accord religious communities the right to exercise influence in the political public sphere. See his dialogue with Cardinal Joseph Ratzinger, then Prefect of the Congregation for Doctine and Faith at the Vatican, now Pope Benedict XVI (Habermas and Ratzinger 2004).

If Habermas offers an open-minded secularist response to the role of Christianity (and by extension other religions) in the public domain, this still puts religion onto the back foot. It is required to accept the secular terms in order to be taken seriously when matters of common interest are debated. Joseph Weiler (2004) has refused such secularist terms of debate. Contributing to contempor-ary constitutional debate in the EU, he has argued that secularism in effect ghettoizes Christianity. He maintains that not to recognize the formative role of Christianity in European history is to repress a key, shaping, dimension of the continent's cultural heritage.[4] The writing of a European Constitution, argues Weiler (as indeed does Habermas) is also a way of defining a collective identity. For Weiler (2004: 44), the Christian past ought to be an acknowledged as an essential (though not exclusive) part of the formation of a demos, which is conceived as a community of memory.

It is noteworthy that – notwithstanding their differences – each of these perspectives takes religion seriously. They share the same ground in recognizing that a religious identity can provide some core materials for constructing meanings, giving voice to a group's interest, and that it has the potential for shaping public decision-making.

Arguments about religion and secularism – a long-standing feature of debates about collective identity in Europe – have now become interwoven with questions about the scope and limits of a multicultural and multiethnic society, as, for instance, recent debates in Belgium, France, Germany, the Netherlands and the UK show. These debates have been elaborated within the boundaries of national public spheres, although they have not been unaffected by wider processes of European integration and globalization. The EU constitutional process, however, has been the spur to raising questions of identity politics at the supranational level, with unprecedented intensity.

'Europeanness': Identities and Public Spheres

The question of a 'European identity' has figured in cultural commentary for a good two decades. This is not surprising, as the EU is a highly heterogeneous entity in which culture, nationality, ethnicity, language and religion continue to have major symbolic weight. Since the end of the Cold

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[4] Weiler(2004: 95) is a practising Jew and his argument addresses the position of Jews and Muslims in a 'Christian Europe'. He suggests it would be opportune to refer to the 'Judaeo-Christian tradition' in the Preamble to the Charter of Fundamental Rights (which is part of the Constitution). Space does not permit us to consider his argument in detail here (see Menéndez 2004, for an interesting dissection). The influence of the Holocaust on his thinking is evident (Weiler 2004: 92, 148) and he has persistently read European constitutional development through Jewish religious metaphors and analogies (e.g. in Weiler and Wind 2003).

War, and the demise of the great simplifying narratives of communism vs capitalism, Europe's complexity and its potential as a cultural battlefield have come increasingly into focus (Schlesinger 1992).

The post-Cold War evolution of the continent has underlined the continuing importance of the nation-state as a principle of political organization. As most of the post-communist successor states have fled from what remains of the Russian sphere of influence, they have sought a home both in NATO and in the EU. Thus, the renascent nationalist project has been tempered by the quest for inter-national frameworks that might provide both security and economic well-being. The EU's attraction has, above all, rested on the guarantees it offers of the entrenchment of a more democratic order and because it is forcing-house for economic modernization.

The EU's expansion eastwards leaves us wondering how the additional ethnic, national, religious and culturo-linguistic diversity will be integrated and how this will change the EU's dynamics. The diversity of its social base certainly raises questions about whether an EU public sphere, capable of becoming the locus and focus of common debate by most of Europe's peoples, is at all imaginable. The EU's territorial expansion and economic integration are contradictory. While it simplifies some social relations by developing the single market and diffusing democratic norms across the continent, it simultaneously engenders increased complexity and therefore steering problems for the present system of governance. Moreover, the EU's incipient supranationalism has contributed to producing nationalist and regionalist reactions to a perceived loss of sovereignty and threats to collective − most especially, national − identity.

Such considerations require us to consider what would be involved in the construction of a common 'European' identity coterminous with the political space of the EU and underpinned by its institutional realities. It is plain that such an identity (because of its partial coverage of the continent) cannot exhaust all possible claims to 'Europeanness'. There is no common European citizenship that embraces the entire continent, which could offer one form of identity. Indeed, the geographical boundaries of 'Europe' are themselves contested and inasmuch as the EU claims more and more to 'represent' Europe, its continual growth continually unsettles possible comprehensive identity-claims. Nor do cultural background or religious affiliation or ethnicity either individually or in combination settle the question of who is a European.

Collective identities – whether national or supranational – are the outcome of processes of inclusion and exclusion: to be 'us' we need those who are 'not-us', against whom boundaries can be drawn and conceptions of belonging and non-belonging articulated. Collective identities have a temporal dimension: they are rooted in traditions which, as Hobsbawm and Ranger (1983) have famously pointed out, might actually be of recent provenance. Characteristically, as Maurice Halbwachs (1992) long ago showed, such identities invoke versions of common or shared memories whose hegemony is often the object of struggle inside a given collectivity. Collective identities commonly also have a spatial dimension: in Europe, national identity claims have been normally linked to land or territory with defined, though often contested, boundaries (Eisenstadt 1999; Schlesinger 1991). Within Europe, in the modern era, the territorial boundaries that define the space of the national state have also been the effective limits of the public sphere. The development of the EU as a polity, superimposing its own spaces of identity and of public debate on those of the member states, has brought a transnational dimension to how the public sphere must now be conceived. Indeed, it is more apt to think of the transforming EU as a sphere of publics (Schlesinger and Kevin 2000).

The question of identities in the EU is closely connected to the question of the public sphere – the communicative space in which, according to Jürgen Habermas (1989), matters of general interest are open to public debate. As the EU has evolved, however, how we might conceive of the public sphere has changed. Habermas's theory has shifted ground. In his earlier work, the scope of the public sphere was defined by the nation-state. Subsequently, it has been conceived as boundaryless. However, while recognizing the ways in which information-based networks may expand the scope of communication, Habermas (1997) has been concerned with the conditions for the creation of a European public sphere, which does require us to think in terms of a bounded polity. In this context, the process of constitution-making is seen as a key step to the creation of a common political culture by virtue of intensified interaction. The constitutional framework is both supposed to structure and to embody a common political identity. If Habermas's (2001) reasoning is right, and constitutional reform does indeed have such importance for the formation of a political community, the debate about the EU's identity does matter greatly because of its defining impact on the emergent collectivity.

It remains the case, however, that all efforts to define a transnational identity continue to face a major obstacle. The key collective identities with political weight inside the EU continue to be those territorially framed by the

Member States. Within these, the component nations continue to provide the politically crucial forms of recognition. While extensive powers have been ceded to the EU's institutions, the states' territorial domains remain potent spaces of political identity.

No Member State is an ideal-typical or 'pure' nation-state – in which, according to Gellner's (1983) classic definition, the national culture and the political roof can be made to coincide perfectly. States may contain several overlapping public spheres, as we need to allow for communicative spaces at the sub-state level, whether these be national, linguistic, ethnic or regional. That said, individual political membership of a state takes the form of citizenship, which is often – but not invariably – coterminous with nationality, and indeed, often confused with that concept. Because, in Benedict Anderson's (1983) now well-worn phrase, to possess citizenship of a state – rather like nationality – entails member-ship of an 'imagined community', being a citizen transforms individuals (through a legal-symbolic framework) into members of a collectivity. Citizenship defines the scope of political belonging. By contrast, as successive Eurobarometer polls have demonstrated – the European citizenship available to all citizens of Member States since the Maastricht Treaty (1992) has not yet superseded the identities offered by Member States as a focus of loyalty and affect. And the current debate over communicative processes has yet to offer conclusive arguments that we are witnessing the emergence of a common European public sphere.

Communication through the Constitutional Process?

Reflection on the constitution provoked by the Convention has explicitly pursued communicative purposes. At the same time as the image of an open, deliberative process was being promoted, a constitutional text intended as a framework of identification for citizens was being written. The Commission's President, Valéry Giscard d'Estaing (2003: 27), summing up what had been achieved, firmly insisted on both of these dimensions, underlining his own perception of what needed to be done. 'Europe is still an organisation; it is not yet a political entity . . . Europe situates itself above the lived experience of the Member States, but it is less lived than the life that is rooted in each of these', Giscard d'Estaing opined. The objective, then, has been to make the European Union both visible and trans-parent by endowing it with a legal personality. From a geopolitical standpoint, it is a matter of affirming the prescence of a European political body. This explains why the Convention discarded the adjective 'universal' from Articles I.2 and I.3, which deal with values and principles. What has been emphasized instead – as communally

specific – are values such as tolerance, equality between men and women, and respect for international law (2003: 27–8).

Transparency and the mobilization of civil society, therefore, have been construed as imperatives. In this, we may discern a leitmotif of the discourse of legitimation that goes back to the 1980s. Transparency, in *communautaire* thought, takes on a paradigmatic value, indeed becomes practically synonymous with democracy. Transparency is held to be the linchpin of the relationship between political responsibility and communication: it is no longer concerned with how those in power account for their actions ex post facto, as they would in a representative system of government. Rather, the public authorities need to be under the day-to-day scrutiny of the citizen. The European Constitution undertakes to develop this new conception of how to communicate political responsibility so as to enhance the accountability of the European institutions (Magnette 2002: 149–52).

In the Final Report of the Convention Presidency to the President of the European Council (Convention pour l'Avenir de l'Europe 2003), those aspects that emphasize the opening outwards of the constitutional process came under the spotlight. These included the public nature of the sessions; the accessibility of documentation on the website (which averaged 47,000 hits monthly, peaking at 100,000 in June 2003); the setting up of a Forum that received 1,264 submissions from NGOs, economic interests, academic circles and others; a plenary session held in June 2002 devoted to civil society; and the Youth Convention held in July 2002.

Ultimately, the outcome seemed vitiated because it operated within a predictable framework both of actors and discourse, as had the Convention on the Charter of Fundamental Rights in 2000 before it (Eriksen *et al.* 2001; Delauche-Gaudez 2002: 177–226). The Convention for the Future of Europe's media coverage was irregular and rather predictable both in how it was handled and in the audiences that it addressed.[5] It appeared difficult to circumvent well-entrenched national patterns of news on European integration (Baisnée 2002; Garcia and Le Torrec 2003; Kevin 2003).[6] Survey results on the impact of the Convention tell their own story. In October

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[5] Interview with Thomas Ferenczi of Le Monde, 19 November 2003.

[6] A comparative study of media coverage in twenty member states led by the Centre for European Policy Studies (CEPS) focused on coverage of two main issues in the constitutional debate: the Charter of Fundamental Rights and the common foreign policy. The Charter was cited in twelve countries as a reason to support the Constitution and in three others as a reason to reject it. Enlargement was presented as a threat to national identity in the media of a majority of member states but promoted in peripheral countries such as Ireland or Greece. See Thomas Ferenczi, 'Vingt-cinq campagnes nationales', Le Monde, 18 February 2005.

2003, a Eurobarometer Flash survey (Commission Europeénne 2003) reported that 61 per cent of those questioned said that they had never heard of the Convention. Asked about the constitutional project itself, almost half those surveyed were don't-knows. One year later, in November 2004, just after the solemn and widely media-covered signature of the Constitutional Treaty in Rome by heads of state and government, one-third of Europeans surveyed said that they had never heard of the European Constitution. More than half claimed to have heard of it but to know very little about it (Commission Europeénne 2005: 3–4). In some countries, subsequently, attention was focused through national campaigns over treaty ratification. However, the French non on 29 May 2005, like the Dutch nee on 1 June 2005, showed the complex range of issues (many shaped purely by national circumstance) brought to the vote on whether or not to ratify the constitution.

Some insight into the ease − or lack of it − with which civil society can be mobilized across the EU may be instructively linked to specialized patterns of communication during the constitutional process. Take the European Youth Convention held in July 2002. Some 210 young people, aged from 18 to 25, coming from twenty-five states, convened for three days of work on the same documents as the senior conventionnels. The youngsters were asked to convey the vision of future generations to the political decision-makers. Giscard d'Estaing exhorted them to be 'the constituents of their [own] European dream'. The results of the Youth Convention revealed an overall conformism and a tendency to reproduce the dominant institutional discourses. One reason for this lack of radicalism may lie in how the delegates were recruited. The young conventionnels were recruited by their elders (mainly by MPs in the national and European parliaments) and by the European Youth Forum (an NGO closely linked to the EU institutions). They usually belonged to pro-European circles, were well up on the Brussels debates, and simply reproduced established arguments and positions.

Arguably, the constitutional process has not greatly enlarged the social scope of those engaged in deliberating European matters. So far as the debate over religious questions is concerned, this too has followed well-worn European tracks and stayed within established circles. Our analysis of religious interest groups shows the dominance of a Catholic-Protestant alliance and the sidelining of other confessions and faiths. Attempts to develop a broader constituency in order to mobilize the support of various strands of public opinion, has had little success. In that connection, the petition launched by the Euro-MP, Elizabeth Monfort, is an instructive case. Close to the right-wing nationalist Philippe de Villiers, and herself a member of the European

People's Party, she saw her proposal to recognize the Christian heritage swept aside by the European Parliament (Le Monde, 13 December 2003).[7] She then decided to appeal directly to citizens by means of a petition.

By February 2004, Montfort's petition, she maintained, had secured some 700,000 individual signatures, not counting the support of various associations claiming to represent some 40 million citizens.[8] Apart from mobilizing this support, those behind the initiative thought that they had ensured that the question of Europe's Christian heritage would stay on the political agenda. They believed that they had managed to arouse unprecedented awareness of the spiritual dimension of European construction, bringing into existence transnational networks able to resource future campaigns.

According to our research, however, key actors in the debate, both civil servants and those representing both religious and lay interest groups, were mostly unaware of the petition. Media coverage was rare. Moreover, political decision-making was not influenced as intended. The case of the petition illustrates the difficulty that MEPs may sometimes experience in attracting attention or in significantly mobilizing sections of civil society (Morgan 1999).

While political and media attention was directed at whether God or the Christian heritage should be mentioned in the Preamble to the Constitution, in fact, this was not of principal interest to the key actors concerned. In the small world of Brussels-based experts, of much more central concern was what was at stake in Article 52 – the question of the status and participation of the churches in decision-making. This latter issue attracted no attention. Humanist circles explain this by invoking a conspiracy theory. The Catholic Church is held to have engaged in a diversionary action about the Preamble in order to secure a discreet passage for its real objective: becoming a privileged partner of the institutions.[9] Others have argued that the media needed to find a popular hook on which to hang the constitutional process and that the Preamble and the Christian heritage were more accessible.[10] In effect, and as is frequently the case, the established actors in Brussels coalesced around points of consensus and smartly avoided areas of conflict (Costa 2001).

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[7] Elizabeth Montfort's amendment proposed that after mentioning the religious heritage of Europe in the Preamble to the Constitution, the words 'notably Christian' should appear. The European Parliament rejected this demand on 24 September 2003 by 283 votes to 211, with 15 abstentions.

[8] Telephone interview with Elizabeth Montfort, European People's Party MEP, 10 February 2004.

[9] Interview with George Liénard, Secretary-General of the European Humanist Federation, 20 November 2003.

[10] Interview with Thomas Ferenczi of Le Monde, 19 November 2003.

Constitution, Identity and Memory: Aporia of the Sacred?

Apart from its significance for communication and its potential impact on the consolidation of a European public sphere, the EU's constitutional process is also relevant for the debate over a European identity. The dominant assumption in Europe is that a typical political community has a common relation to the past and therefore that it shares common memories.

Stepping outside this model, Bernhard Giesen (2003) has argued that there is indeed a basis for a common identity and memory in Europe and that in key respects this draws on a long-standing Judaeo-Christian heritage. In the wake of World War II and the Shoah, Giesen (2003: 32–33) notes that there are 'shared rituals of mourning and confessions of collective guilt' across Europe. On this basis, he concludes, that 'a new traumatic memory of perpetrators now unites the European nations and provides for a tacitly assumed moral consensus: a European identity based on the horror of the past'.

This line tends to ignore the divisive national competition that may take place over claims to suffering. It also assumes that beliefs manifest in official acts of commemoration are shared by entire populations. With the modification of memory across generations, not to speak of the practice of Holocaust denial and various forms of historical revisionism, we may indeed doubt that past horror provides a robust enough foundation to sustain present European identity. More fundamentally, perhaps, Giesen pays too little attention to the distinction between 'thick' and 'thin' social relations and how this might play out. Avishai Margalit (2002) has argued that we tend to care most about the ethical communities to which we have thick relations. From this perspective, a nation may well be an ethical community, with family-like ties that bind, and at the same time, it can be 'a natural candidate for forming a community of memory'. 'It is in the contents of the shared memories, such as a common origin or shared past, that nations are interested in' (Margalit 2002: 101). Although not all nations (or states) conform to this model, where they do, national collective memories will certainly be more compelling than the transnational consensus over trauma posited by Giesen.[11] The connections between memory and imagined – or imaginable – affiliation therefore have a crucial bearing on whether we can (yet) call ourselves Europeans.

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[11] A 'positive' national memory is frequently presented as more attractive than a rational (but 'negative') European memory. The continuing pull of the national is frequently opposed to post-national theory. See Ferry and Thibaud (1992).

Recognition of this problem is not novel. Mobilization by the EU institutions of the concept of a European identity as a political resource dates back to the 1970s (Stråth 2000). Prior to this, the debate had been presented solely in terms of functional integration. While a 'European consciousness' might sometimes have been evoked, identity as such was not a card to play. All changed with the economic crisis of the 1970s that propelled Member States of the EEC into intensified co-operation to reinforce their global position. At this time, underpinning the discourse of legitimation became an imperative that brought about a series of intergovernmental initiatives. The Declaration at the Copenhagen Summit in December 1973 set up a general framework. The Tindemans Report of 1975 requested by the European Council stressed that the heroic epoch of European construction, led by a few pioneers, was now over. It was now necessary to convince the citizen. But this had little direct effect. The results of the first European elections under universal suffrage in 1979 and then in 1984, revealed low and falling participation as well as campaign agendas that were essentially national. This provoked new approaches. The European Council set up the Adonnino Committee, whose report of June 1985 notably resulted in the creation of a European symbolic repertoire: an anthem, a flag, Europe Day. The modest success of these symbols marked the inherent limits of this kind of identity-building enterprise, as noted by successive reports from the European Parliament and the Commission. Subsequently, during the 1990s, institutional discourse shifted away from the notion of identity to emphasize the 'democratic deficit', making increased rhetorical use of technocratic terminology both in the field of communication and that of 'nation-building' (Foret 2001, 2004).

The constitutional process engaged in by the Convention did not reverse this tendency. At the very start, there was a certain ambition to undertake both educational and symbolic work. There was a desire to produce 'a short text, strong and resonant that might be read or learned by schoolchildren', in the words of Etienne de Poncins, one of the drafters of the Constitution working in the Convention Secretariat (De Poncins 2003: 72–3). But identity questions occupied no more than a limited and contested place in the deliberations. By way of example, the Convention's constitutional project endowed the Union with a certain number of symbols, which provoked some reservations even though the text did no more than formalize those already in existence (2003: 481–2). The twelve-star flag and the European anthem have been retained. The same applies to 9 May, the day of the Schuman Declaration, which has kept its status as Europe Day, but without becoming a holiday for all Europeans, as had been proposed. Strictly speaking, the euro is not a new feature; however, in the constitutional

process it acquired a novel status by being designated as 'the currency of the Union' (Article I.8). This brought protests from the United Kingdom and Denmark, which interpreted this description as pressure to rejoin the single currency (2003: 483). The name of the EU was debated at Giscard d'Estaing's initiative, however, the alternatives were not convincing and the status quo remained in force. The Convention's president proposed four options: 'The United States of Europe', the historical formula used by Hugo and Churchill, but which he thought came too close to imitating 'The United States of America'; 'The European Community', an historic name central to the integration process but seen as inadequate for that reason and therefore as a back-wards step; 'United Europe', the term that Giscard d'Estaing himself advocated, arguing that it was a way of emphasizing the noun 'Europe', but which was seen as awkward. In the end, the final option, 'The European Union', was kept because of its wide and established use, as much as for the impossibility of finding an alternative (2003: 82–3). The slogan 'united in diversity', which figured both in the Preamble and in Article I.8, represented the only real innovation (2003: 77).

The outcome in terms of identity and symbolism hardly came up to expectations. The same could be said for the question of memory. Identity presumes a significant measure of similarity with one's contemporaries but it also relates to what we have in common with earlier generations and those to come. The constitutional project had the overarching goal of demonstrating the will of European citizens to overcome their past divisions and to forge a common destiny while at the same time conserving and honouring their national histories. It therefore seemed appropriate to applaud (without arrogance) the contribution that Europe had made to human history by emphasizing its major achievements (democracy, human rights, and so forth) in the context of its openness to the wider world (De Poncins 2003: 72–3). However, those very differences rapidly came to the surface in relation to the uses of the past. Several members of the Convention proposed that the conflicts that had ravaged Europe be mentioned, so as not to promote an artificial image of the continent's history and in order to issue a warning for the future. The Presidium refused to go along with this, taking the view that to mention past differences was simply out of place, citing by way of counter-example the instance of the United States, where official allusions to the Civil War are rare (2003: 76).

The debate about acknowledging the Christian heritage was part of the traditional problem of what could be a European identity and memory, but on this occasion with its specific focus as that of religious belonging. It played into the wishes of some inside the EU to seek a new basis for legitimation,

but at the same time it also brought into play resistances that ended by defeating the proposal.

Christianity and the idea of Europe have long been connected. Christianity has been constantly used to define Europe without at the same time being totally identical with it, as Gerard Delanty (1995) has shown. The discursive strategies that have used these two notions as symbolic resources have tended to work around several nodal points. First, the eastern borders have functioned as a line of exclusion (with reference to the Ottoman Empire, Russia, the world of Ortho-doxy), leading to a consequent 'occidentalization' of Europe (often reduced to 'the West') (Neumann 2001). Second, the relationship to Islam as a 'constitutive other' has been noteworthy, irrespective of the contribution of Arab civilization to the European world. Third, Rome has been a key focus of either acceptance or rejection.

If the European idea as a cultural framework took shape between the tenth and fifteenth centuries, it did not assume a political aspect until the sixteenth century, just as Christianity lost its unifying capacity in the face of the Reforma-tion and the wars of religion. The Renaissance and the Enlightenment were resources for an alternative, new, and secular identity. The French Revolution was an end-point in this process, marking the symbolic collapse of Christianity as a political system (Delanty 1995: 65–83).[12] The relation between the political conception of a European identity and Christianity is both close and antagonistic. Both terms have been in constant interaction but also in competition. In the same way, at the level of the national state, the Church and State have both continuously opposed and copied one another in the construction of their institutional apparatuses and the world-views that these have embodied. National identities have been partly constituted by a religious dimension, however attenuated that has now become in much of Europe (Madeley 2003: Chap. 2; Williaime 2004: 26–7). Apart from providing an administrative model, the churches have also provided states with theories of legal legitimation and rituals to copy (Kantorowicz 1957). Political power has been defined both by and in opposition to religious institutions. That is notably the case in France, an exemplary instance of the conflict between Church and State. Even during the most fraught moments of confrontation, the civil authorities continued to

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[12] For Delanty (2003: 5–6), any path to Europeanization has to take account of the 'three civilizational constellations that have been constitutive of modernity in Europe. These are: (1) the Occidental Christian constellation; (2) the Byzantine-slavic Eurasian constellation; and (3) the Ottoman, Islamic constellation'. It is an open question whether the EU can steer such diversity in the direction of a cosmopolitan order or whether, in the future, long-established cultural and political divisions might not reassert themselves.

copy the practices of the spiritual authorities, not least while the grip of the latter on social life and practice was strong (Ozouf 1989; Ihl 1996). Two conceptions of citizenship confronted one another through struggles within educational institutions and wider social life, but at the same time they were in an exchange relationship (Deloye 1994).

In the context of European construction, the interaction between institutions and political and religious identities has been no less intense and influential. From the very start of the integration process, the Vatican lent its support to the under-taking, at first from a distance but with increasing involvement over time. Popes Paul VI and John Paul II openly exercised their influence to defend the values and role of the Catholic Church (Canavero 2003). Christian democracy provided a good part of the leadership and of the militants of the European cause (Chenaux 1990). The religious dimension had some noteworthy effects on public support for integration (Nelsen *et al.*, 2001).

Along with French technocratic elitism, social Catholicism has had an import-ant shaping influence on the evolution of the EU's institutions and practices. Jacques Delors, President of the European Commission (1985–94) incorporated both of these. Delors was a key advocate of the Catholic doctrine of 'subsidiarity', thereby carrying on in the tradition of Jean Monnet, himself the architect of the European Commission and European Council as organizational forms. Holmes (2000) has identified how a 'sacred modern' approach, deriving from Catholic social teaching has become embedded in the EU's thought and practice. Subsidiarity – a commitment to diversity and restraint developed in Catholic social teaching – in effect entered the secular domain to become a key term in the language of the EU, defining the various appropriate political levels in European federalism.

The legitimizing tropes of politics have been continually reworked through a religious optic. The 'Founding Fathers' have been the object of a sanctifying cult (Milward 1994). The Community's symbols are frequently read by way of a Christian heritage which was not invoked when they were first created (Lager 1995). References to Christianity continue to be privileged in how symbolic belonging to Europe is defined. The Council of Europe took a pioneering role in this. When its 'Cultural Routes of Europe' programme was launched in 1987, its first act was to restore the pilgrimage to Santiago de Compostela, duly followed by other sacred pathways. The EU followed this practice in its promotion of the Christian heritage in its 'Culture 2000' programme. This approach found support in the 'peripheral' states of Scandinavia and central and Eastern Europe, as it showed their historic

participation in the spiritual and political systems of Europe (Kalinowski 2002).

For their part, the Christian institutions undertook memory work that aimed to redefine the basis on which they could intervene in the public sphere, taking into account new modes of belief. The de-institutionalization of the religious field and the individualization of religious practices no longer allowed the churches to lay claim to the function of social regulation as the basis for their political role. Consequently, they have repositioned themselves in relation to the new sources of legitimacy. In a Europe in which the official constitutive criteria are democracy and human rights, it is necessary to demonstrate that these very values are the product of the Christian conception of humanity. Hence, Christian institutional discourse set out to establish that it was Christianity that had made human rights possible by treating the person as sacred and as the subject of inalienable rights. Religion cannot now monopolize meaning but it still continues to be mobilized as a key source of values and an identity-conferring tradition. It is 'religion as heritage' that the churches presently emphasize in order to present themselves as the guardians of the European patrimony (Kalinowski 2003: 7). Their status as privileged interpreters of this heritage also has led them to propose a specific role in decision-making. The strategy is not to speak to the political order in the name of a superior, external power but rather one of sustaining it from within, based on a special relationship to its founding principles (2003: 12).

Where pluralism is taken to be a normative principle of democracy, it becomes impossible to rank the different spiritual traditions present in the European Union. In the Convention's debates it was suggested that a list of the different religions that had shaped Europe be compiled. However, this proposal was quickly abandoned as no consensus could be reached on a definitive list. A first compromise was to identify three key epochs in European history: (1) that of the ancient Greek and Latin civilizations; (2) that of the spiritual and religious élan (or uplift); and (3) the century of Enlightenment. The second period made trans-parent reference to Christianity, apparent from its use of the term élan, which derives from the official discourse of the Vatican. However, this solution was rejected by the 'pro-Christianity' camp which denounced the 'historical denial' entailed by the omission of the Christian heritage, made all the more unacceptable by explicitly mentioning the Enlightenment. Given the evident impossibility of overcoming such divisions, it was finally decided to limit the historical dimension to citing the 'road to civilization' opened up by the EU without identifying any specific source (De Poncins 2003: 74–5). Reference to the

religious heritage on the same footing as the cultural and humanist ones is a noteworthy step when compared with the Charter of Fundamental Rights. The secularist camp was prepared to tolerate the compromise. Even so, with John Paul II and subsequently Benedict XVI as their spokesmen, those who wished to make reference to Christianity in the Preamble persisted in seeking to modify the text right up to the conclusion of the constitutional process, and have persevered since (Le Monde, 13 December 2003; EU Observer, 23 December 2003; Le Monde, 27 April 2005).[13]

Two distinct strategies seem to have emerged in the Catholic camp. Putting the set-back over the Preamble behind them, while at the same time as deploring it, COMECE, the conference of Catholic bishops, also circumvented it by seeking to reappropriate the constitutional text. The global influence of Christianity, it was suggested, had been recognized implicitly by references made to the 'road to civilization' built by Europe, by the use of the specifically Christian term 'churches', and also by taking account of the particular contribution of these to governance (COMECE 2005a: 15–20). COMECE further insisted on the indispensable mediating role of Christianity between the continent's eastern and western memories (COMECE 2005b: 10ff.). There appears to be a new division of labour. On the one hand, there is the bishops' lobbying activity: their consultation with the European institutions and with other religions, as well as their engagement in transnational exchange. All of this is part of a strategy of adaptation and compromise in playing the game of both horizontal and vertical Europeanization. On the other hand, the Vatican has maintained its more rigid intergovernmental approach, while defending its confessional specificity.

It is not surprising, therefore, that the only immediate practical strategy in trying to construct a European memory has been to be silent about the specifics. However, given the controversies that have been stirred up by the debate about Christianity, this can hardly be seen as a stable unifying amnesia.

Europe's pluralistic religious heritage defies simple enumeration. Nor could it easily be manipulated into some officially endorsed hierarchy: in the Constitutional Convention's texts, this led to the rejection of any reference to 'the religious heritage, notably the Christian'. That said, the practice is actually more discriminatory, as Willaime has shown. All faiths are recognized

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[13] The Protestant view was that it was not necessary to formulate the Preamble if this was not able to give due recognition to the whole spectrum of religions. Interview with Gunnar Stålsett, Lutheran Emeritus Bishop of Oslo and executive member of the European Council of Religious Leaders, Oslo, 4 May 2004.

as having jointly contributed to European history. However, Christianity has had the key moulding influence and is the central reference point. Other faiths have found themselves marginalized. Within Christianity, the tendency of the Catholic Church to arrogate to itself the management of the European religious heritage aroused critical reactions among Protestants. John Paul II's politics of memory was centred on the first millennium (notably that of medieval monasticism) rather than that of the second (which included the Renaissance, the Reformation and the Enlightenment). His regular recourse to the saints also produced polemics because these figures were rooted in an exclusively Catholic tradition, often arousing painful memories for other religions (Willaime 2002: 91–2). In this approach, one can discern the workings of a selective memory that shapes and orders in line with its own goal of political mobilization.[14] Here too, the inescapable choice appears to be between obligatory political amnesia and partisan mobilization in favour of a given representation of the past, neither of which is without attendant difficulties.

Finally, questions arise about the compatibility of temporal conceptions embodied in religious memories, on the one hand, with the political integration project, on the other. Marcel Gauchet (1995) has hypothesized a transition from a society based on religious belief and heteronomy, structured by the 'elsewhere' of the sacred, to an autonomous society which is its own lawgiver by way of a system of political beliefs. This shift involves a displacement of the sources of authority. Religious belief, Gauchet argues, involves believing in the authority of the past whereas contemporary political belief involves believing in the authority of the future. European integration, a political undertaking that crystallizes the characteristics of supermodernity, is particularly symptomatic of this reversal in the social construction of time. Marc Abélès (1996) has described the cult of urgency and the continual forward projection that marks policy-making in the EU. This makes it almost impossible to develop a cumulative image of the past and to orientate oneself to history in ways other than a continual return to the Community's origins and to the Founding Fathers. Historically-oriented analysis of EU publications, and historical perspectives carried in the editorials of the different national presses in the Member States, throw into relief the pregnant myth of the early days of European construction. They also retail the

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[14] Opponents to any reference in the Constitution to the Christian heritage denounced this selectiveness. They cited as their reason the implied silence regarding black moments of European religious history. 'The Christians speak of nothing but the active. We also need to talk about the passive. For example, the Inquisition. You have to talk about everything or say nothing. The evocation of the [Christian] heritage simply opens up old wounds. This is against any pacification of identity.' Interview with George Liénard. See note 9.

widespread view that there is a contemporary crisis in the integration process – not least because present-day actors are thought to be inferior to the pioneers of the Golden Age of Jean Monnet. Finally, the uncertainty of the future is also manifest (Foret 2001: Chap. 6). It seems premature to conclude that the EU can now move on, as Giesen might propose, with a consensus that rejects the negative past, not least of Nazism, Fascism, and the Communist Other of the Cold War. Differences still erupt when the time comes to specify which objects of collective memory need to be cultivated. The problem of anchoring a historical perspective by way of a particular date, place or given person has been particularly moot in the case of religion. Religious memory, which is profoundly defined by tradition, has great difficulty in reconciling itself with the EU's future-oriented temporality as this undermines sacred linear time.

Conclusion

The constitutional process has thrown into relief the place occupied by religion in a potential European public sphere while, at the same time, showing the role that religion may play as a political resource when addressing the difficult issue of what it is to have a European identity and memory.

The discretion evinced towards the question of the Christian heritage during the European election campaigns of 2004 shows the illegitimacy, not to speak of the danger, in using religion as an electoral argument in the competition over power. The subsequent focus on this theme, most notably in respect of the negotiations over the Turkish candidacy for EU membership during the latter months of 2004, shows that while religion no longer entirely frames the debate, it can become strikingly relevant when it assumes a different role – that of demarcation. In the event, to invoke the Christian character of Europe in order to disqualify eventual Turkish membership, or at least to set the terms for this, means having recourse to religious belonging. This is then used as an instrument of cultural defence against what some perceive to be a danger. The positive value accorded European secularism as opposed to American messianism works in a similar vein. In short, religion may have its strategic uses.

The religious issue has been used to seek a place in the overall framework of 'governance' by way of partnership in the civil society recognized by Brussels. Religious bodies have claimed a specific place as an actor in the domain of public policies. The EU's organizational logic and discourse have reshaped the particularism of religious actors. In practical terms, 'Europeanization'

entails accepting pluralistic politics and the Brussels rules of the game. That said, the question of Church–State relations is largely the prerogative of the Member States and significant differences persist at the national level. Although all European societies are facing changes in religious adherence, these differ from place to place and are far from homogeneous. If there are specific common effects due to European integration, these have yet to be demonstrated.

The question of the role of religion has pointed up the shortcomings of the EU's discourse of legitimation, which is a keystone of the integration project. There have been recurrent attempts to identify an underlying common culture and communicative space in order to delimit the scope of a supranational European political entity. These attempts have tried to address the citizens' perceived need for some overarching normative allegiance. The putative Euro-democracy is still hunting for its principles and conditions of existence.

The debate on the place of religion in the constitutional process is the current phase of a long history. Raising the question of the Christian heritage and its place in EU integration has opened up broader questions about the basis for the Union's cultural unity and socio-political cohesion. In short, the religious issue is a potent one. And present struggles about its place are but the latest episode in a continuing drama.

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Chapter 6

Organised civil society in the EU constitution-making process

Geir Ove Kværk
ARENA, University of Oslo

> [T]he Conference calls for a deeper and wider debate about the future of the European Union … [and] will encourage wide-ranging discussions with all interested parties: representatives of national parliaments and all those reflecting public opinion, namely political, economic and university circles, representatives of civil society, etc.
>
> Declaration on the Future of the Union
> European Council, Nice 2001

Introduction

Organised civil society seeks to influence EU decision making processes by various strategies. Thousands of organisations monitor EU decision making processes and have established links to institutions such as the European Parliament (EP) and the European Commission[1]. This has led to the emergence of a veritable 'army' of lobbyists and other representatives of various organisations and interest groups who furnish information and prepare

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[1] As one of the key policy-makers for more than 10 years in the EU, former Agriculture Commissioner Franz Fischler recognizes, in recent years several developments have changed the nature of lobbying and the monitoring and strategies to influence policy making processes in the EU: the internet and the increased availability of documents; the increased attention on civil society and 'good governance' in the EU; the Commission's consultation processes on policy initiatives (Fischler 2004).

inputs to influence decision making processes and actors. Interest groups exploit a variety of channels into the decision making processes, and they do often cooperate and join forces (either permanently or ad hoc) for getting heard in the growing jungle of civil society organisations and other lobbyists present in Brussels (see e.g. Van Schendelen 1993).[2] This often involves establishing European umbrella organisations and common secretariats or representatives in Brussels. The resources available for establishing such secretariats matter: 'well endowed associations have much better access than have-nots. They can afford to employ specialized and entrepreneurial staff which deals with EU issues' (Eising 2005: 30). Smismans (2003) finds that the logic behind the European Commission's dialogue and interaction with civil society has developed from building support for policy initiatives to responding to the legitimacy crisis of the Brussels institutions, conceptualising this interaction as 'functional representation and participation'[3]. It is important to note that there exists various 'routes of influence' to EU decision making processes (Greenwood 2003), as organisations and interest groups can either approach national decision makers ('the national route') or the EU level directly ('the Brussels strategy'). Organisations will exploit these strategies differently, and many organisations exploit the 'national route' only.

Even though there are substantial variations in influence of civil society towards different policy areas[4], the lobbying activities of organised civil

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[2] Although etsimates vary between 10 000 and 30 000, it is often estimated that some 15 000 lobbyists are present in Brussels. Different studies also have various estimates of the number of organisations lobbying at EU level, figures varying from 900 to more than 2 500 (see among others Philip and Porter 1997; Wessels 1997). Information available on registered lobbyists to the European Parliament suggests that almost 5 000 lobbyists represent some 2 100 organisations (civil society, business, interest organisations and political authorities) at the European Parliament. As the Commission is concerned, more than a decade ago it was estimated that the lobbyists in Brussels counted around 10 000, representing some 3 000 organisations (European Commission 1992). Not all of these lobbyists are full-time employed in Brussels though. Their main position is often in the national headquarters of the various organisations. Several institutions have seen the need to establish rules and to organise the interaction with interest groups and other organisations: the EP Committee on the Rules of Procedure has done much work on this; see also European Commission 2000, 2002. The Commission and the EP have traditionally taken differing approaches towards civil society influence, and Eising (2003: 197) therefore points to the fact that there are no uniform rules on the participation of civil society or interst group organisations in the EU policy making processes.

[3] See also e.g. Warleigh (2001) on the increase of political systems' legitimacy by including civil society organisations (through participation, expert knowledge, and/or developing identity and public opinion).

[4] The access of civil society is much better towards the policy fields covered by the first pillar of the EU, the European Community, whilst the second and third pillars are more intergovernmental in character giving less access for civil society (Eising 2003: 194).

society towards everyday policy making in the European institutions stand in some contrast to the influence or even presence of civil society in the treaty-making processes of the EU. The treaty-making processes have formally been conducted in Intergovernmental Conferences (IGCs), i.e. closed negotiation and bargaining arenas consisting of government representatives of the member states. Also the most recent reform process, which has perhaps ground to a halt due to popular rejections in referendums on the Treaty Establishing a Constitution for Europe[5] (hereafter the Constitutional Treaty), has been decided by IGCs. However, the preparatory work and drafting processes for the negotiations have undergone profound changes over the last years: from numerous small groups of government representatives working in secrecy[6], to convening a Convention which was marked by a larger degree of representativity and transparency. The introduction of the Convention method in preparing treaty revisions came from a wide consensus on the shortcomings of the IGC method, which increasingly resulted in stalemate and left important challenges unresolved. This was particularly evident after the European Council in Nice 2000 (see e.g. Hoffmann 2002; Closa 2004).

The treaty revision processes of the EU have historically been closed to civil society. However, this has changed with the Laeken process and the two Conventions. The introduction of the Convention method introduced an unprecedented opportunity for civil society to contribute to treaty-making processes. To what extent did organised civil society exploit the new opportunity to influence treaty changes? This chapter is an analysis of the involvement of organised civil society in the two Conventions on constitutional or treaty-revision matters: the Convention on the Charter of Fundamental Rights of the European Union, in 2000, convened by the Cologne European Council (hereafter the Charter Convention), which drafted the Charter that was subsequently included in the Constitutional Treaty, and; the Convention on the Future of the Union (2002-2003), convened by the Laeken European Council (hereafter the Laeken Convention), which drafted the Constitutional Treaty.

First of all, the opportunity structure will be examined more closely. What procedures were established by the Conventions? Following this, I will examine how the opportunity was exploited. What was the extent of participation, who were the participants, and what did they argue? This will

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[5] Published in *Official Journal of the European Union*: OJ C 310/1-474, 16.12.2004.
[6] Examples include: the Spaak Committee prior to the Rome Treaties (EEC and Euratom); the Adonnino Committee and the Dooge Committee prior to the Single European Act; the Delors Committee prior to the Maastricht Treaty, and; the Westendorp Group prior to the Amsterdam Treaty.

indicate to what degree organised civil society consider the EU and the two Conventions to be relevant and important political arenas. It will also allow us to identify visions 'from below' on the Union in relation to its legitimacy, as the constitution–making processes may be understood as debates on the fundamental characteristics of the EU, and what makes a legitimate Union.

Many analyses[7] have studied Convention procedures and made observations on the extent and the influence of the participation, and many others have analysed the debates in the two Conventions[8]. However, this chapter offers a systematic analysis of the contributions and a mapping of the contributing organisations. Onus is on the 'social ressonance' of the processes, not the effects that civil society might have had on the decisions of the Conventions. To what degree were the Conventions connected to or disconnected from civil society? As the reform process of the EU is often portrayed as remote and elitist, it is interesting to see if this was also the case for the two Conventions. Thus, I ask whether and to *what extent* organised civil society did take advantage of the opportunitites to contribute, *who* did so, and *what arguments* they presented.

The organisations' arguments are uncovered by analysing the written contributions that have been posted on the two Conventions' web sites, and the presentations made by organised civil society at plenary sessions of the two Conventions. A detailed scheme is developed to assess the arguments presented in the contributions and presentations.

The assumption here is that the response from civil society was considerable in the two Conventions, which might indicate that European civil society organisations conceive of the EU as a relevant and important political entity and arena, and that the processes of reforming this entity bring forth a range of different visions on the legitimacy and characteristics of the EU. I expect to see an increase in participation from the first to the second Convention, partly because the Charter Convention was a first experience and 'test' for civil society and the Convention method, and partly because the themes for the second Convention were much broader.

I proceed in five steps. In the first part I discuss the concept of organised civil society and how it is applied in this study, before outlining the theoretical

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[7] See among others Deloche-Gaudez 2001, De Schutter 2003 and Lombardo (forthcoming, 2007).

[8] See among others Closa 2004; Crum 2004; Magnette 2004a, 2004b; Schönlau 2004; Fossum 2005. See also Marit Eldholm's (2007) analysis of positions and arguments of selected members of the Laeken Convention, using the same theoretical approach as this analysis.

approach informing and structuring the analysis. The second part examines to what extent the two Conventions involved organised civil society in their work: the frames in terms of the topics to be dealt with, and the structures and procedures for involving civil society and foster debate. The third part examines the response from civil society, focusing on *which* civil society was drawn into the process. In the fourth part I consider the *content* of the response from civil society, what vision of Europe it portrayed? The final part holds the conclusion.

Theoretical approach

The two Conventions set up structures that were meant to give civil society organisations an opportunity to contribute to their work. The focus of this analysis is therefore on organised civil society, 'those nongovernmental and non-economic connections and voluntary associations that anchor the communication structures of the public sphere in the society component of the life world' (Habermas 1996: 366-7). The concept of 'civil society' has a wider definition than this, including the whole spectrum from 'non-profit' interest organisations to 'the social part of society' (Cohen and Arato 1995; Taylor 1995b). Civil society can be understood as the political and cultural sphere of society – the public – where citizens can lead an active debate on public institutions and policy. According to Cohen and Arato (1995: xi) 'civil society refers to the structures of socialization, association, and organised forms of communication of the life world'. An important question in relation to the EU is to what extent there is a *European* civil society and public[9]. There is not a 'space' for public debate in the Union comparable to such 'spaces' in political entities such as the nation states. Arenas for debate, as well as the questions and themes under debate, are still very muck linked to the nation states or regions, not to the European level[10]. There are however signs of a European level organised civil society, although most European level civil society organisations are composed of national and regional organisations grouping together with the aim of exerting influence on policy making at the European level.

Various forms of ties (financial support, consultative status and the like) exist between organised civil society and political institutions. However, civil society organisations are foremost coupled to the private spheres of society (Habermas 1996: 368). Non-governmental organisations (NGOs) are

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[9] For more on this see for example Fossum and Schlesinger (2007, forthcoming).

[10] Although some examples of a transnational debate has emerged in recent years, such as the debate on the 'Haider affair' in Austria in 2000, and the mobilization against the war in Iraq in 2003. On this, see e.g. Eriksen 2003.

independent of public authorities, and are established with the purpose of influencing the policy making processes of these authorities and institutions, or 'to act in the public arena at large, on concerns and issues related to the well being of people, specific groups of people or society as a whole' (European Commission 2000: 4). Civil society organisations in this analysis includes various types of NGOs such as human rights organisations, religious organisations, various social and humanitarian organisations, cultural organisations and organisations representing the elderly, children, women, gays and lesbians, disabled people and other specific groups. It also includes organisations representing economic actors and interests such as employees and workers, employers, farmers, industry, landowners, entrepreneurs etc. It is important in this analysis to also include interest organisations representing economic interests, as one of the objectives is to identify arguments on the economic, self-interest perspective of the EU.

Three strategies of legitimation for the EU

The EU is today a political union which makes decisions that concern almost every policy field and which restricts national sovereignty. However, the Union's development can follow different trajectories along a spectrum running from what we can describe as a mere economic problem-solving organisation premised on national control, with policy specific fields of supranational cooperation, to the other end of the scale, a full-fledged citizens' Europe where the Union is still consisting of nation-states, but where the European political level is premised on and emanates from its citizens' control and participation to a degree still only depicted at the national (and local) level.

There are different views on what the EU *is* and what it *should be*. For the purpose of evaluating the contribution from organised civil society along the lines of their view on the EU and its legitimacy, I apply three strategies of legitimation of the EU: legitimation through (a) outcomes; (b) values; and (c) rights (Fossum 2000; Eriksen and Fossum 2002, 2004)[11]. These strategies are ideal models of three different trajectories that may be conceived of as possible for the Union, and they are coupled to conceptions of what a legitimate EU may look like. The strategies may therefore help us to structure the debate on the Charter and on the future of Europe – and the variety of ideas and visions on what the EU is, what it ought to be, and how to get there.

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[11] This theoretical framework was spelled out in detail and applied to several empirical studies in the CIDEL (Citizenship and Democratic Legitimacy in the EU) project (2002-2005, funded by the European Commission's Fifth Framework Programme). See more on this at http://www.arena.uio.no/cidel

The first strategy is based on the legitimacy of a political system according to the outcomes or results produced by that system, thus on actors' perceived costs and benefits of different political outcomes. This model presumes a downscaling of the current level of integration in the EU into a mere problem-solving regime, legitimised through the member states' democratic quality and the performance of the Union. Words and arguments that can help us identify this position are focus on actors' (hereunder nation states') subjective interests, on highlighting costs and benefits of European cooperation, on efficiency and on indirect legitimation, i.e. on democratic member states.

The second strategy is based on value-communities' significance for the legitimacy of political systems, on the stabilizing attribute of common normative beliefs within a community. This strategy is based on direct legitimation of the Union as an independent political unity, as is also the third strategy described below. Arguments consistent with this strategy speak of the set of values that are characteristic of Europe, what makes people Europeans and what differentiate them from non-Europeans, what can define a value-community amongst the citizens of the Union. Arguments consistent with this are expected to focus on: European identity; European values, culture, traditions; community etc., and characterizations of other Europeans as fellow compatriots.

The third strategy deals with the notion that the respect of, and visibility of, fundamental civil, political and social rights will lead to citizens' perception of themselves as the (co-)authors of laws that affect them. This means heightening ambitions towards the creation of a Union based on basic rights and democratic decision-making procedures, a Union as an independent granter of rights. Arguments and reasons that reflect this strategy will focus on rights and duties in building support from the citizens, that the acknowledgement of citizens' rights creates a political identity.

The two latter strategies reflect the notion of 'strong evaluations' as opposed to the first strategy's reflection of 'weak evaluations' (Fossum 2000: 116). While weak evaluations evaluates our preferences in relation to results and expected benefits, strong evaluations encompasses the quality of our motivations in relation to values and norms: 'the human ability... to attach worth to our desires' (from Charles Taylor, ibid.). Weak evaluations entail choices that are not necessarily based on the quality of alternatives, while strong evaluations are all about the differentiation of motivations that are 'high' or 'low', of good or bad nature (Taylor 1995a: 23, 125).

Categorising organisations and arguments

From each of the three strategies we can draw some expectations to the civil society involvement in the two Conventions: the participation and involvement structures laid down by the Conventions; the parts of civil society that were evoked by the work in the Conventions; and the arguments and visions of the Union that were pronounced by civil society. I expect there to be a strong link between the type of organisations and the arguments put forth to the Conventions, such as cultural organisations portraying the value-based vision.

According to a vision of the Union as a problem-solving regime based on the legitimacy of the nation states and the efficiency of the Union, the process of treaty-making will be in the hands of the governments, in the IGC, where participants have veto-powers. To the extent that the preparatory work of the Conventions is considered to be strengthened by parts of civil society, this would happen through the inclusion of experts. One must assume that the broad participation of civil society will be depicted as a way to hinder the efficiency of the work and thus the quality of the result. I expect this strategy to be reflected in contributions from parts of civil society that represent economic interests, such as industry, employers, and property-owners. Arguments that reflect this vision of the Union will emphasize the indirect legitimacy of the Union and the sovereignty of member states; the consolidation of existing Treaties and rights more than the development of genuine constitutional traits; and include words like *useful*, *benefits*, *costs*, *advantages*, and *economy*.

Cultural communities are central to the value-based model outlined above. Involving a broad range of actors and civil society in the Conventions' work is thus based on their qualities as bearers of values and culture. According to this perspective, the constitution-making process can best be depicted as a process of rediscovery and clarification of the value base of Europe. This rediscovery process is not objective. It is based on strategic choices concerning which elements are central to the community that (will) tie Europeans together. The role of civil society in this will thus foremost be of spreading awareness of the work of the Conventions. Parts of civil society that will involve themselves in the process of portraying the value-character of the Union are federalists, cultural, spiritual and religious organisations, as well as organisations focussing on history, heritage and education. Formulations that identify this strategy will be arguments on a European identity of culture and values, and words and expressions including *culture*, *tradition*, *values*, *belonging*, *community*, *European*, and *heritage*.

Central to the rights-based model is also a community feeling and allegiance of the citizens vis-à-vis each other. However, the basis of this allegiance, in contrast to the value model, is procedural, i.e. based on the communicative and legislative procedures that enable citizens to picture themselves as co-authors of the law, through rights and obligations and the recognition of each others as rights holders. The procedures of the Conventions will therefore need to ensure inclusion of all those affected. As is elaborated further in the following section, this inclusion can pertain both to physical representation and to representation/inclusion of arguments. The parts of civil society that are expected to reflect this strategy are mainly organisations concerned with justice, such as human rights organisations, social organisations, and organisations focussing on equality and redistribution. Arguments that reflect this strategy will focus on justice and equal rights for all. Words and expressions will include *justice* and *morality*, *civil and political rights*, *Union citizenship*, *participation*, *openness*, and *representation*.

Civil society in the two Conventions
Opportunities and limitations
To what extent did the institutional framework allow for contact and contributions from civil society to the two Conventions? While one must expect that informal contact between civil society organisations and individual members of the Conventions and organisations and governments represented in the Conventions occurred, this is not discussed here. It is likely that those organisations with close ties to the Commission or EP have used this relationship also in the processes of drafting the Charter and the Constitutional Treaty. Some organisations have over the last decades had a fair amount of success in convincing decision-makers to change or modify their positions on more policy specific issues (Pedler and Van Schendelen 1997). In order to assess civil society's contributions to the two convention processes, it is important to clarify what kind of framework – opportunities and limitations – that was imposed on this involvement: through the scope and topics laid by the European Council for the work of the Conventions, and through the actual procedures determined by the Conventions themselves. The topics dealt with by the Conventions are central to our understanding of: which parts of civil society took interest in the processes; what arguments were made by these, and; what differences were there between the two Conventions? The procedures for involvement (as set by the European Council and by the Conventions themselves) are also important, not least because the Charter Convention was the first of its kind, thus giving valuable experience for the framework to be applied in the Laeken Convention.

The Charter Convention[12]

The drafting of a Charter of Fundamental Rights for the EU is not necessarily
a process where the agenda and the scope of the work are self-evident and
clearly defined. To what extent should a supranational Union be equipped
with a Bill of Rights, and what rights should it contain? The decision by the
Cologne European Council in June 1999 to draw up such a Charter was not
the start of fundamental rights protection in the Union,[13] but the Union was
explicitly initiating a process with constitution-making undertones. The EU
thus stood at a crossroads already before the explicit statement of this by the
Laeken Declaration of 2001. According to Lenaerts and De Smijter (2001:
278-9), the Charter had three possible missions; to extend rights protection to
rights which are not already encompassed by the treaties or constitutional
traditions of the member states; to strengthen the judicial base of the rights
protection of the Union, or; to increase the visibility of the rights protection
in the Union and thus to underline the political dimension of the European
integration process. The question of what rights to include in the Charter,
but also the status of it, was decisive for what type of document that would
come out of the process. This could in turn be an indication of what type of
political entity the EU is evolving into. It was possible to imagine the Charter
both as a rights catalogue strengthening the economic and problem-solving
image of the Union, and as a Bill of Rights with civil and political rights
applicable to the citizens of the Union.

The mandate from the European Council identified the respect of
fundamental rights in the Union as 'an indispensable prerequisite for her
legitimacy', and the need 'to establish a Charter of fundamental rights in
order to make their overriding importance and relevance more visible to the
Union's citizens' (Cologne European Council, Presidency Conclusions,
Annex IV). The European Council thus wanted to collect the fundamental
rights in a common text. The sources to be used in this process were defined
as the rights in EU law and the sources that the European Court of Justice
(ECJ) has applied in its extension of EU law (European Convention for the
Protection of Human Rights and the member states' common constitutional
traditions). In addition, the European Council instructed the drafting body
(which later took the name Convention) that the Charter should contain 'the

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[12] This paragraph and the others on the Charter Convention are based on Kværk 2003.

[13] The *Internationale* judgment by the European Court of Justice from 1970 defined the
protection of fundamental rights as a basic principle in European Community (EC) law. The
Treaty on European Union (Article 6-2) also explicitly states that 'The Union shall respect
fundamental rights, as guaranteed by the European Convention for the Protection of Human
Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result
from the constitutional traditions common to the Member States, as general principles of
Community law'.

fundamental rights that pertain only to the Union's citizens', and that 'account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers' (ibid.). Even though the sources mentioned are narrower than the acquis communautaire, the drafting body was given great leverage for interpretation and selection of rights. Through this selection process, the Charter could take a number of different shapes. On one hand, the chairman Roman Herzog stated that 'we are not talking about a European constitution here, and the issue is not whether in setting itself fundamental rights the European Union stands to gain in terms of statehood' (CHARTE 4105/00 BODY 1 ANNEX 1). The drafting body was not a constitutional assembly, and it was not evident in what direction and how far the drafting of the Charter could push the Union. On the other hand, the possibility of drafting a Bill of Rights could spur constitutional changes in the Union even though such changes were highly contested. In short, the Charter Convention drafted a document collecting the fundamental rights of the Union, and the drafting body was – even though dominated by law experts, and with an overweight of men and persons above 50 years of age – more representative than other similar preparatory bodies in the history of the EU. The Convention was largely comprised of popularly elected representatives (although not elected for this task). The work of the Convention was, at least in the first phase, characterized by deliberation more than negotiation, and the process was marked by openness. Even though negotiations dominated the final phases of its work, this was preceded by the establishment of trust and by reason giving[14]. All in all the Convention's composition and procedures enabled a weakening of the traditional divisions and cleavages of IGCs.

The Charter Convention was the first of its kind in the history of the EU[15]. Its working methods were therefore largely elaborated along the way, as the mandate from the Tampere European Council only spoke vaguely on this matter. On the involvement of civil society, the mandate stated that 'other bodies, social groups and experts may be invited by the Body to give their views' (Tampere Presidency Conclusions), but it did not go into details on the procedures to be applied. On its first meeting the Praesidium (the presidency/preparatory body of the Convention) decided to stage hearings with representatives of civil society, first at national level, then at a

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[14] See Schönlau 2005, esp. ch. 4.

[15] While previous treaty revisions and IGCs have been preceded by various preparatory bodies, these have been small groups of government representatives working in secrecy (as among others the Spaak Committee, the Dooge Committee, the Delors Committee and the Westendorp Group).

Convention plenary session where representatives of civil society at the European level should present the views that had emerged in the national hearings and debates.

The contact between civil society and the Charter Convention had two main elements. Firstly, the Convention made an open invitation to civil society for written contributions that would be published in its original language on the Convention's website, where all other documents from the Convention were posted as well. In practice however, the posting of contributions on the website proved to be poorly accessible and incomplete.[16] The Convention imposed no restrictions on the written contributions, neither on their contents nor on their size.[17] The contributions were naturally mainly directed towards the Convention members, and it is likely that most organisations got their contributions examined by (at least some) Convention members and/or their assistants. 203 organisations and 12 individuals (not including observers or members of the Convention) made written contributions to the Charter Convention. The total number of contributions from these was more than 330.

Secondly, was the hearing of 27 April 2000, where 71 organisations[18] made presentations of 5 minutes each.[19] The invitation to this hearing stated that 'interested non-governmental bodies are accordingly invited to come

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[16]   The Convention had two websites, one on the EP domain (http://www.europarl.europa.eu/charter/default_en.htm), and one on the Council domain (http://www.ue.eu.int/df, which is no longer active (on 27 April 2007)). The first site contained a list of links to documents that apparently seemed complete but actually covered only 129 of the more than 300 contributions from civil society. The second site contained all the documents, but they were retrievable only through targeted search.

[17] This is confirmed by some of the NGOs I have contacted (Amnesty International's EU Office; European Children's Network; European Forum for the Arts and Heritage; European Region of the Lesbian and Gay Association; European Study Group, and several others), and by the fact that the contributions varied considerably in size and scope.

[18] Some other sources (e.g. De Schutter 2003: 134; van den Burg 2002) operate with figures ranging from 60 to 70 organisations. My figure of 71 is from a reading of all the contributions presented at the hearing. Not all of these were NGOs, such as a multinational company (Bass PLC), German television (ZDF) and some federations of local and regional political authorities. If these are disregarded, this leaves us with 66 NGOs, a figure that is consistent with the Convention's own (see e.g. CHARTE 4306/00 CONVENT 32).

[19] On 2 March 2000, the Praesidium held a hearing of 4 specially invited European federations of NGOs (Permanent Forum for Civil Society; European Trade Union Confederation – ETUC; Platform of European Social NGOs; NGOs – Fundamental rights coordination), a hearing which seemingly acted as an indicator for the Praesidium as to how the larger hearing in April should be organised. This hearing consisted of a real exchange of opinions and arguments between the NGOs and the Praesidium, but the Praesidium later decided to apply a much more superficial approach to the main hearing on 27 April.

forward' (SN 1872/00). It also stated that federations at the European level, and organisations 'dealing with human rights' (CHARTE 4208/00 CONVENT 20: 2) would be given priority. Still, the participants and speakers represented a wide array of organisations, from landowners and multinational corporations to labour unions and human rights organisations, as well as federations of local and regional authorities. Justus Schönlau reports[20] from his interviews with the Secretary General of the Convention, Jean Paul Jacqué, that the only criterion applied by the Secretariat was that the NGOs had to be active at the European level.

The Convention's report from the hearing states that 'on the whole the mood was a very open one and enabled a number of important points to be clarified' (CHARTE 4306/00 CONVENT 32: 1). However, the hearing was a one-way communication without any debate or feedback on the presentations made by the organisations. Several NGOs which I have contacted express their dissatisfaction with the short speaking time allocated, and also to the absence of Convention Members at (parts of) the hearing. Kurt Krickler from ILGA-Europe (European Region of the International Lesbian and Gay Association) got the impression that the one-day summarised presentations had little effect on the Convention Members. Dick Oosting from the EU office of Amnesty International found disinterest in the hearing and said that it was a 'mass ritual with scores of organisations having five minutes and without any kind of interaction'. Interviews made by Deloche-Gaudez (2001) largely confirm this impression.

In addition to submitting contributions and to participate at hearings, a number of organisations approached members of the Convention in more informal settings, inviting them to seminars, making telephone calls, sending letters, contacting them at meetings and so on. Some organisations were more successful in having Conventioneers present at seminars and meetings than others who had their inquiries contact overlooked or turn down. The size and composition of the Convention meant that for organisations to gain an impact of the decisions a number of people would have to be convinced. However, this also meant that the chance of organisations to get their arguments into the debate via one or more of the Conventioneers was rather good.

The only restriction that the Charter Convention imposed on civil society was a statement concerning the hearing of 27 April 2000; that organisations at European level were preferred. This can be interpreted as the Convention

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[20] In correspondence with the author.

wishing to legitimate the process by involving NGOs representing large groups of citizens, thus using the NGOs as channels for dispersing attention of the work on the Charter, as the mandate stated: making the fundamental rights protection 'more visible to the Union's citizens'. The open invitation to make written contributions was basically an invitation to participation in the debate on the Charter, and may thus increase the legitimacy of the Convention's end-result through the broad possibility for involvement in the process. However, the absence of restrictions and framework regulation this participation did not make it necessary or even possible for the Convention to reply to all the contributions or in other ways show that these were taken into the drafting process.[21] The influence of outside actors on the debates inside the Convention was thus not clear, and this may have contributed to spreading doubts as to who was actually responsible for the result of the process.[22]

Can the Charter process and the participation of civil society in this be seen as putting the 'fundamentals' of the Union up for broad debate? It is difficult to assess the influence of civil society on the debates in the Convention or on the end-result. Civil society saw no participation rights (no formal status as participants or observers, no entitlement to feedback on contributions), but they had a right to be heard. It is thus necessary to separate between representation of persons or groups in the process, and the presentation of their arguments. The latter was valuable in the sense that all interested parties had the possibility of bringing their arguments into the process. It is likely that civil society's arguments were taken into the open debate that dominated the first phase of the Convention's work.[23]

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[21] On this see also De Schutter 2003.

[22] The European Commission even claims that ordinary citizens were involved in the drafting of the Charter (see: http://europa.eu.int/comm/justice_home/unit/charte/en/faq.html).

[23] One example of arguments from civil society was the claim made by several women groups that the Charter should contain explicit wording on gender equality in all areas. NGOs such as AFEM (Association des Femmes de l'Europe Méridionale), ECICW (European Centre of the International Council of Women) and EWL (European Women's Lobby) made multiple demands on this, as the Praesidum's drafts as late as July 2000 contained wording on gender equality only in 'employment and work' (CHARTE 4422/00 CONVENT 45). In the final version of the Charter though, the position of the women groups are reflected in the formulation that 'equality between men and women must be ensured in all areas' (Article 23). Without concluding on the role of women groups in bringing forth this change, it is a fact that groups such as AFEM transmitted repeated and detailed contributions to the Convention, held seminars and workshops on these themes, and often approached Members of the Convention directly. According to one of the alternate Members of the Convention, Jacqueline Dutheil de la Rochére, this strategy was a 'lesson in lobbying' (quote from Deloche-Gaudez 2001: 21).

The framework for civil society's participation in the Charter Convention resulted mainly in a reflection and enhancement of the debate on the Charter that was initiated by NGOs throughout Europe. The preferential treatment of European organisations to national ones is consistent with the logic of a rediscovery process where large all-European organisations could the values of their members into the Charter process. The framework did not reflect a logic of legitimation through performance, mainly due to the openness and the extensive opportunity to participate. This does not mean however that the Charter process reflected a logic of (rights to) participation. The Convention could have gone further in this direction through more generous deadlines and support to organisations, and it could have set up procedures for feedback and enabled more organisations to involve in dialogue with Convention members. The procedures favoured large European NGOs with well-established routines and resources at the European level enabling them the ability to adapt to a tight schedule and high pace and to surpass the absence of formal influence opportunities by engaging in informal contact with central actors. To conclude, the participation of organised civil society in the Charter Convention differed considerably from the everyday lobbying towards European institutions as regards the representativity of the organisations. However, the parts of civil society that contributed with input to the Convention's work were far from representative of European civil society, but consisted of an elite of organisations.

The Convention on the Future of Europe

In Laeken on 15 December 2001 the European Council agreed on a 'Declaration on the Future of the European Union' which identified the problems facing the union, and elaborated on the questions that would have to be answered or given possible solutions. The European Council chose to convene a 'Convention on the Future of the Union', which was an institutionalization of the debate on the future of the EU, but which did not mark the beginning of this debate.[24] The European Council in Nice in December 2000 has agreed on a 'Declaration on the Future of the Union' which identified the need to improve the democratic legitimacy of the Union, and called for a debate which should include European institutions, national parliaments, political, economic and academic circles and representatives of civil society.

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[24] The speech made by Germany's foreign minister Joschka Fischer at the Humboldt University in Berlin, 12 May 2000 sparked debates on the finality of the Union both in political and academic circles. Fischer's suggested solution to the challenges of enlargement and institutional reform was 'the transition from a union of states to full parlamentarisation as a European Federation'. Fischer outlined a European federation of nation-states, with a constitutional treaty ('Verfassungsvertrag') for the regulation of powers.

Thus, the Laeken European Council convened the second Convention in the EU's history and laid down the principles for its composition and procedures. It also specified the work to be done by the Convention, through more than 50 questions clustered under four headings. The first set of questions concerned the division and definition of competence in the EU, thus the clarification of which competences should lay with the Union, which should remain with the member states, and which could be shared. The second set related to the simplification of the Union's instruments, on how to better define and to reduce the number of such instruments. Thirdly, there was a set of questions concerning the need for democracy, transparency and efficiency in the EU: notably the question of how to increase the legitimacy and transparency of the Commission, Council and Parliament; what role national parliaments should have, and how this should relate to the Council and the European Parliament. The final set of questions dealt with the possibility of the simplification and reorganisation of the Union and its treaties leading to the elaboration and adoption of a single constitutional text.

The topics identified for the work of the Convention on the Future of Europe were much broader than the mandate for the Charter Convention, but both addressed the question of the finality of the Union. One would therefore assume that the Laeken Convention would receive more attention on a wider range of issues, engaging larger parts of civil society, but that the basic arguments on the future EU would be comparable between contributions made to the two conventions.

The mandate from the European Council at Laeken encouraged an as broad as possible debate on the future of the EU, and sought to foster this through a more structured involvement of organised civil society in the process:

> In order for the debate to be broadly based and involve all citizens, a Forum will be opened for organisations representing civil society (the social partners, the business world, non-governmental organisations, academia, etc.). It will take the form of a structured network of organisations receiving regular information on the Convention's proceedings. Their contributions will serve as input into the debate. Such organisations may be heard or consulted on specific topics in accordance with arrangements to be established by the Praesidium.

At the inaugural meeting of the Convention, its vice-chairman Jean-Luc Dehaene – who was responsible for the dialogue with civil society – stated

that he envisaged the dialogue with civil society to be held at four levels: on the internet; in national forums; with observers like the Economic and Social Committee and Committee of Regions, the social partners and NGOs; and in the Convention itself. In a follow-up note to the Members of the Convention, Dehaene elaborated on these structures, and repeated that 'the public should be able … to provide input into the Convention's work' (CONV 8/02). He encouraged the Members of the Convention to take interest in views expressed by civil society and to participate directly in the dialogue that would be centred on the website of the Forum, but which would also include hearings in front of the Convention. Regarding these hearings, the Dehaene signalled a 'careful selection of participants', which later on turned out to be less regulated by the Convention itself but left to the NGOs themselves. The website of the Forum opened on 28 February 2002, and was run by the European Commission under supervision of the Convention Secretariat. In order to make the arrangements as visible to citizens and organisations as possible, the Presidency[25] of the Convention on 27 March 2002 sent an open letter for publication to the editors of newspapers in all member states and candidate countries, wherein the invitation to make contributions to the Convention was made, together with a brief outline of the Convention and the Forum.

The 'Forum' was intended in the Laeken mandate as a 'network', but it turned out to fall short of this[26]. It was basically a list of the organisations that had registered and submitted written contributions to the Convention. Early in the process the Secretariat issued both a list of organisations that were registered with the Forum by 7 June 2002 (CONV 112/02 ADD 1), and a digest of the contributions made by these organisations (CONV 112/02). However, the majority of organisations registered with the Forum after this date, and the bulk of contributions were sent to the Convention (or more precisely, to the Forum) after this date. At the end of its work, the Convention reported that the Forum had received '1264 contributions from NGOs, the business community, academia and others' (CONV 851/03). A survey of the contributions and organisations on the Forum website does however show that about 530 organisations made written contributions. Out of these, about 370 placed themselves in the category of either 'socio-

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[25] President Valéry Giscard d'Estaing, Vice-President Giuliano Amato and Vice-President Jean-Luc Dehaene.

[26] According to Lombardo (2003: 23) it was even described by one of the contributing civil society representatives as '"a black hole" from where no response ever came back (apparently, it was not even used as a data-base of the people concerned with the different issues, on the basis of which e-mailings could be organised)'. Another civil society actor said that 'you send something but nothing ever comes out. No answer to any letters. No acknowledgement of receipt. Nothing' (Lombardo 2003: 14).

economic' organisation or 'other, civil society, NGOs and school of thought'.[27] Unlike for the Charter Convention, only organisations were invited to make contributions.[28] Guidelines for the contributions were also more pronounced than in the Charter Convention. The Secretariat formulated the following demands: 'It [a contribution] means a text which has been drawn up specially for the Convention, which is about the future of the European Union and reform of the treaties, and which deals (not necessarily exclusively) with the subjects and questions addressed in the Laeken declaration. To qualify for publication on the website, contributions must be presented and approved by an organisation which is clearly identified, and must be submitted by a named legal representative'.[29] A summary of the contribution also had to be provided. Contributions could be submitted in any number of language versions (restricted to the official languages of member states and candidate countries).

The Laeken Convention devoted a special plenary session to a hearing with organised civil society, and prior to this the Convention established eight contact groups[30] with the organisations registered at the Forum. Members of the Praesidium (as well as other members of the Convention, which were encouraged to participate) met with these contact groups in a series of meetings 10-18 June 2002. At these meetings, representatives of civil society made short presentations of their views on the work in the Convention, in addition to deciding on who should represent civil society at the special plenary of the Convention a fortnight later. Representatives from about 350 civil society organisations and 250 academic organisations and political authorities were present at these hearings.[31] The special plenary session that was devoted to civil society took place on 24-25 June 2002 in the Paul-Henri Spaak building of the European Parliament in Brussels. The representatives of

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[27] Each organisation had to submit a registration form for their contribution to be published on the internet. This form included providing names of contact persons, e-mail and website-addresses, and to place the organisations in one of the four categories of: 'political or public authority'; 'academic and think-tank'; 'socio-economic'; and 'other, civil society, NGOs and school of thought'.

[28] 'Individuals who wish to take part in, and contribute to the debate are encouraged to do so via the wide range of … organisations which are authorised to participate in the debate. … Individual contributions are also welcome for the numerous discussion forums … on the national debate sites and on the discussion site [the EU's Futurum site]' (quote from the Secretariat's guidelines on the Forum website).

[29] From the Forum website: http://europa.eu.int/futurum/forum_Convention/how_en.htm.

[30] The eight groups and the number of organisations participating in them were: Social sector (74 organisations); Environment (14 orgs.); Academia and Think-tanks (43 orgs.); Citizens and Institutions (66 orgs.); Regional and local authorities (138 orgs.); Human Rights (64 orgs.); Development (29 orgs.); and Culture (53 orgs.).

[31] For a resume of the hearings, see CONV 120/02.

civil society were seated in the middle of the hemicycle, whereas the Convention Members took seat at the margins of the assembly room, thus reversing the normal placing orders. 30 representatives of the contact groups as well as observers from the Committee of Regions and of the Economic and Social Committee were allowed to make presentations at the session.[32] During the course of the two days, the rooms adjacent to the assembly room were used for meetings and debates between representatives of civil society organisations and Convention Members. The session was also an opportunity for informal communication between civil society representatives and the Convention Members, over the "verre de l'amitié" invited to by Giscard at the end of the first day, and in the lobby areas of the building where organisations set up stands where representatives could provide information and grab hold of Convention Members circulating the area.

In addition to these hearings, various civil society organisations were in contact with the working groups of the Convention, as well as directly with individual Convention Members who participated at hearings and debates all over Europe, as various sources can testify to (see e.g. the reports on the national debates published by the Convention).

The Laeken Convention could draw on the experiences of the Charter Convention on how to involve civil society in its work. This might explain the increased effort in this Convention compared to the first one regarding the involvement of civil society through the establishment of the Forum and the contact groups. Despite this, the absence of feedback on contributions, and the favouring of large Brussels-based NGOs continued in this Convention. None of the two Conventions seemed to have the will or resources needed to establish structures that ensured the involvement of civil society beyond a one-way communication. This finding is supported by other analyses, like Lombardo (2003: 2), claiming that the Laeken Convention's 'emphasis on civil society is a rhetorical device to gain legitimacy rather than a genuine move towards a more pluralistic EU democracy capable of including mechanisms of active participation of citizens and social actors in the policy making process'.

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[32] At this session, Convention Members also presented (brief) summaries of the debates on the future of the Union in their home countries. For a resume of the plenary session and the statements made there, see CONV 167/02. Also, see the full transcripts (in original languages used by speakers) of the plenary session, available at: (Day 1 – 24 June) http://www.europarl.eu.int/europe2004/textes/verbatim_020624.htm, and (Day 2 – 25 June) http://www.europarl.eu.int/europe2004/textes/verbatim_020625.htm.

Which organised civil society?

Among lobbyists on EU decision making the profit making organisations or sector often outnumber non-profit organisations by about 100 to 1 (Pedler 1993: 309). The organisations that contributed to the two Conventions were strikingly different from this pattern. Non-profit organisations representing the interests of citizens in value or rights issues made up more than three quarters of the total number of organisations making contributions to the two Conventions.

NGOs cooperate extensively with other NGOs. Many of the NGOs which contributed to the two Conventions are large European and international federations or unions of national federations made up of local and regional NGOs. To take two examples: the Leuenberg Church Fellowship is a union of 96 protestant church communities throughout Europe, and the Platform of European Social NGOs is a union of 30 networks and federations of organisations in the social sector, representing women, gays and lesbians, elderly people, children, disabled people, unemployed and homeless people across Europe. The contributions submitted by NGOs to the two Conventions were often the result of collaboration among networks of organisations. The more than 650 organisations contributing to the two Conventions thus represented the views of thousands of regional, national and local NGOs.

This analysis includes two characteristics of the contributing organisations. Firstly, the geographical scope of the organisations, based on information provided in the organisations' contributions or information available at their web sites or in various directories (for instance Philip and Gray 1996). Secondly, the functional character of the organisations, thus what kind of interests, values or rights they claim to promote or represent. As discussed above, one would expect the work of the two Conventions to appeal to different (but also overlapping) parts of organised civil society. The drafting of a Charter of fundamental rights and of a Constitutional Treaty would most likely engage organisations that emphasize the importance of rights protection as the basis of legitimacy of political systems. But one could also expect cultural and value oriented organisations to take part in the debates, as well as organisations representing economic interests promoting their interests or even expressing their resistance to the constitution-making process.

Table 1: Geographical scope of organisations[1] with contributions to the two Conventions

Organisation's geographical scope	Convention on the Charter		Convention on the Future of Europe		Both Conventions[2]	
	Number	*%*	*Number*	*%*	*Number*	*%*
International	22	10.8	25	4.7	3	4.6
All-European	75	37.0	204	38.6	41	62.1
Nordic	15	7.4	9	1.7	1	1.5
British Isles	9	4.4	36	6.8	2	3.0
Germany/Austria	45	22.2	84	15.9	11	16.7
France	21	10.3	54	10.2	4	6.1
Benelux	5	2.5	20	3.8	1	1.5
Southern Europe	10	5.0	80	15.1	3	4.6
Candidate states	-	-	13	2.5	-	-
Non-European	1	0.5	3	0.6	-	-
Total number of organisations	*203*	*100*	*528*	*100*	*66*	*100*

[1] Organisations with observer status in the Conventions are not included (Council of Europe; Committee of the regions; Economic and Social Committee; European Ombudsman)

[2] Organisations with contributions to both of the two Conventions

Table 1 shows that the geographical distribution of organisations was almost the same for the two Conventions. More than a third of the organisations were all-European, meaning that they are made up of NGOs from most European countries. Almost no organisations from outside Europe made contributions, while organisations from Germany and Austria made up the second largest group of organisations making contributions to the Conventions. Within the group of 66 organisations making contributions to both Conventions, almost two thirds are all-European organisations. These are large federations of organisations with permanent secretariats in Brussels, and they are active also towards the day-to-day decision making processes in the EU. Many of them have consultative status with the Council of Europe and are supported financially by the European Commission. They constitute an elite of organisations which clearly conceive of the Union as a relevant political arena.

The functional distribution of organisations was also largely the same in the two Conventions, although the proportion of rights-based organisations was smaller in the Laeken Convention, and the proportion of think-tanks and organisations from academia was much larger in this Convention, as is shown in Table 2. Around one half of the organisations are characterised as promoting rights issues.

Table 2: Categories of organisations with contributions to the two Conventions

Type of organisation	Convention on the Charter		Convention on the Future of Europe		Contributions to both Conventions	
	Number	*%*	*Number*	*%*	*Number*	*%*
Outcomes/ economy[1]	22	10.8	51	9.7	7	10.6
Values/ community[2]	57	28.1	166	31.4	18	27.3
Rights[3]	110	54.2	214	40.5	34	51.5
Academia/think-tanks	2	1.0	53	10.0	-	-
Local/ regional political authorities	12	5.9	44	8.3	7	10.6
Total number of organisations	*203*	*100*	*528*	*100*	*66*	*100*

[1] Economy, industry, business, employers, agriculture, property

[2] Culture, community, language, education, media, humanists, religion, federalist, heritage, art

[3] Justice, labour, consumers, weak groups (children, elderly, disabled, animals), environment, equality (gender, race, sexual orientation), social, health, welfare, human rights, citizens' rights

While this analysis make no comparison for both Conventions of the organisations' functional category and the arguments in their contributions. It is worth mentioning however that this has been done for the contributions to the Charter Convention (see Kværk 2003). This showed that for the organisations categorized under 'outcomes/economy', only 1 of these presented arguments that are fit better with another strategy than the outcomes strategy. Out of the organisastions categorized as the type 'values/community', 24 of these argued more in line with the rights-based strategy. As concerns the organisations categorized under the 'rights' category, only 16 of these argued more in line with one of the two other strategies, the value or outcomes-based strategies. For the rights-based and the outcomes-based strategy, there is thus a good correspondence with the categorization of type of organisation and the arguments made by these organisations to the Charter Convention. The value-based strategy proved more problematic however, at least according to the criteria developed in this analysis. The organisations categorized as representing 'values' or 'community' were almost as likely to make arguments in line with the rights-based as with the value-based strategy. The value-based strategy is, as mentioned above, not very well suited to categorize the arguments made to the Charter Convention, at least not using the criteria developed in this analysis.

Another finding in the more detailed study of the contributions to the Charter Convention was the clear relationship between geographical scope of organisations and arguments presented in their contributions. Nationally based German and Austrian organisations mainly reflected the value strategy in their argumentation, the French contributions mainly reflected the rights-based strategy, while organisations from the British Isles mainly reflected economic interests. The non-economic parts of British and Irish civil society did not engage themselves directly in the Convention's work by submitting written contributions, as opposed to other national civil society organisations. That does not necessarily imply that British civil society failed to take an interest in the Charter process, but if they did, they did so in the frames of European umbrella organisations or federations, or through (informal) contacts with the Convention Members.

Both Conventions stated clearly that the target groups for contact between the Convention and civil society were organisations at the European level. In spite of this, a range of national and regional organisations took part and got involved in the process. The different extent of civil society participation – which was larger in the Laeken Convention – might be explained by the fact that the outspoken debate on the future of the Union and the talk of a constitution were easier to grasp, and as much – if not more – prone to bring out visions for the polity, than was the work of the Charter Convention. There was clearly a difference of appeal between a charter of rights and a constitution when it comes to engaging civil society. It was apparently not clear to all parts of civil society what a charter really was, and what potential impact it could have on the future of the Union. The framing of the debate on the future[33] – the Laeken process – was clearly easier to grasp as an opportunity to *express visions for the Union*. On this basis, it is not surprising that the number of civil society organisations in the Laeken Convention was larger than in the Charter Convention. Neither is it surprising that the two groups of organisations was functionally and geographically quite similar. It is likely that those organisations taking an interest in the Charter Convention and following its work are organisations which follow EU developments closely and saw the drafting of a Charter of Fundamental Rights as part of the EU constitution-making process. Whether this is actually confirmed in arguments they presented to the Charter Convention is the topic of the next paragraph.

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[33] While the debate and the work of the Convention later turned quite clearly in the direction of drafting a constitutional text, from the outset this was framed more like a broad debate on the future of the Union, in which the drafting of a constitutional text was an option.

Which arguments?

This section will examine the arguments from the parts of civil society that presented contributions to the two Conventions' work. The focus is on identifying arguments that can identify the organisations' visions of the EU, what kind of entity the EU is depicted as, and what direction is suggested for the development of the Union. This is done through an assessment of arguments made in the contributions to the Conventions (both written ones and the ones presented at the hearings). The main focus is on arguments which express views on what kind of role and what kind of contents a Charter and/or a Constitution for the EU should have. All contributions to the Charter Convention are analysed systematically in this way, by searching for criteria that can identify one or more of the three legitimation strategies.[34] The analysis of the Laeken Convention is based on a sample of contributions.

The evaluation of contributions consists of subjective judgements, but these are based on objective criteria developed from the three strategies. While some contributions are fairly consistent with one of the three strategies, others contain elements that are consistent with more than one of the strategies, and still others focus on details that make it difficult to place them in any of the strategies. I have therefore identified arguments and expressions that are indicative of the organisations' views, through their signalled support or opposition to central evaluation criteria. The analysis has not considered which themes that were avoided in the contributions, as this seems to be closely connected with the available resources and competences of the organisations. Several of the contributing NGOs spoke of this, that they only focused on their particular fields of expertise, and that the time limits and high speed of the Conventions' work – in combination with small secretariats of the organisations – made contributions less thorough and comprehensive than they ideally would have wanted.[35]

The following paragraphs outline the main results of the analysis of the contributions from civil society, going into detail on some contributions in order to illustrate the arguments made and how they can be categorized as

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[34] Concrete criteria in the form of words, arguments or phrases were developed for five themes that were deemed particularly relevant for the Charter process. These themes were: what the EU should be and what it should do, i.e. which competences it should possess; the type of rights to be included in the Charter; whether the Charter should be legally binding or just a political declaration; the scope of the Charter (on what areas of policy and on which institutions); what process for drafting the Charter.

[35] See for instance the following contributions: (European Study Group) CHARTE 4403/00 CONTRIB 260: 7; (Carrefour pour une Europe civique et sociale – CAFECS) CHARTE 4241/00 CONTRIB 114: 5 and CHARTE 4498/00 CONTRIB 348: 2; (European Centre of the International Council of Women – ECICW) CHARTE 4449/00 CONTRIB 303: 2.

being in line with one or more of the legitimation strategies. Although some organisations' contributions were hard to categorize due to vague formulations or very narrow content, others were clear in their argumentation and contained several of the indicators searched for.

The Charter Convention

More than 200 organisations made more than 300 contributions to the Charter Convention. These reveal strong opinions on the Charter. Some see it as a threat against their own interests, some see it as a sign of the Union moving away from mainly economic cooperation, and some see it as a stepping stone towards a full European constitution. Many of the contributions include summaries of comprehensive activity and active debate on the Charter among their members and others. The contributions were made in 8 languages (although most were made in English), they varied from single-paged pamphlets to documents of 77 pages, and the authors varied from private citizens to all-European umbrella organisations representing several million members.

Legitimation through results

As shown above, organisations representing economic interests made up the smallest group of organisations contributing to the Charter Convention. Correspondingly, it is expected that the first of the legitimation strategies will be the least prominent in the contributions. This assumption holds as less than 15 per cent of the organisations reflect this strategy in their contributions.

Table 3: Organisations with contributions to the Charter Convention: geographical scope of organisation and the content of their contribution(s)

Content of contribution(s) / Organisation's geographical scope	Outcomes/ economy	Values/ Community	Rights	*Total*
International	1	6	15	*22*
All-European	7	23	45	*75*
Nordic	7	-	8	*15*
British Isles	9	-	-	*9*
Germany/Austria	4	11	30	*45*
France	-	1	20	*21*
Benelux	-	3	2	*5*
Southern Europe	-	1	9	*10*
Non-European	-	-	1	*1*
Total	*28*	*45*	*130*	*203*

As table 3 shows, the geographical basis of organisations advocating the indirect legitimation of the Union through its outcomes and performance, is not evenly distributed. The most noticeable finding is that all the British (and Irish) national NGOs that contributed to the Charter Convention advocated this strategy. This is a position that historically has been in line with the policy of the British government and the opinions of the British people, a deep scepticism towards supranational integration of a federal character, and a tendency to evaluate the Union's legitimacy on the basis of the results that are produced in delimited, pragmatic, intergovernmental cooperation. Another finding is that there are almost no national NGOs from the core areas of the Union (the original six member states) that advocate this strategy. The main perception of the Union in these countries has historically been different from the pragmatic cooperation approach, and evaluations of legitimacy have accordingly been based on other criteria than 'weak evaluations'.

Table 4: Organisations with contributions to the Charter Convention: type of organisation and the content of their contribution(s)

Content of contribution(s) / Type of Organisation	Outcomes/ economy	Values/ community	Rights	*Total*
Outcomes/economy	18	1	3	*22*
Values/community	-	31	26	*57*
Rights	6	12	92	*110*
Academia/think-tanks	1	-	1	*2*
Local/ regional author.	3	1	8	*12*
Total	*28*	*45*	*130*	*203*

As table 4 shows, the organisations representing economic interest mainly reflected this legitimation strategy in their contributions. The analysis shows that organisations with arguments in line with this legitimation strategy generally perceive of the European cooperation as legitimate only when solving certain common problems that are beyond the reach of the nation-states themselves to cope with. They further underline that the competences of the Union must not be extended at the expense of the member states, and that a Charter including other fundamental rights than economic ones will be illegitimate and should not be made legally binding. Let me illustrate these arguments by presenting four contributions that reflect visions which are in line with the strategy of legitimation through performance.

CHARTE 4317/00 CONTRIB 183 is one of three contributions from the UK Engineering Employer's Federation (EEF), an employer's organisation

which represent more than 5,700 British firms. The EEF submitted three contributions to the Convention which all contain basically the same arguments, and may be categorized as legitimation through performance. The EEF speaks of the negative effects of a Charter that is turned into something more than a declaration containing already existing rights. In addition to complicate the Charter, and with that weaken the visibility of rights to the European citizens, a binding Charter with extended rights (e.g. social and economical), is something that the EEF strongly oppose, as it will 'lead to great uncertainty for industry' (CONTRIB 183: 4). The EEF is concerned with the possible extension of the competences of the Union into areas where member states should retain control, as for example workers' minimum pay. The federation also thinks the process of drafting the Charter is problematic, and it believes that the Convention's strategy of elaborating the Charter 'as if' it should be made legally binding, undermines the IGC method of treaty change and the competences of the member states, which is the basis for the legitimacy of the Union. 'Indeed the Charter thus becomes little more than the pursuit of social and political objectives by the back door' (CONTRIB 183: 4). The EEF is of the opinion that the Charter is going to weaken the legitimacy of the Union by undermining the competences of the member states and deteriorating the conditions for business and industry.

CHARTE 4328/00 CONTRIB 194 is a contribution that was submitted to the hearing of 27 April 2000 by James Wilson representing Bass Hotels & Resorts (Bass PLC). Bass PLC is a multinational company (controlling the Holiday Inn hotels), and the contribution focuses on the effect of the Charter on 'business'. Bass PLC claims that business and industry must have a right to be heard by the Convention as they are the only ones able to secure an efficient economy that provides employment and revenues to society and at the same time serve their clients and employees. This special competence makes it vital to take advantage of their expertise in the drafting of the Charter, in order for the Convention to achieve the best possible result. This view reflects the strategy of legitimation through performance. Bass PLC wants the Charter restricted to making existing rights more visible. The contents of the Charter must contain only fundamental political rights and civil liberties, and should not be made binding, only become a declaration, and it must not extend the competences of the Union. The inclusion of social rights in the Charter would be damaging because this puts restraints on business and because 'social rights involve costs' (CONTRIB 194: 3). Bass PLC believes that the Convention is unfit to evaluate the advantages of such rights against the costs induced by the same rights, and that such changes can only be made in legislative and budgetary processes. 'If you attempt to short cut this process you will strangle enterprise and kill the goose that lays the

golden eggs' (CONTRIB 194: 3). Bass PLC is of the opinion that rights having potentially negative consequences for the economic sectors of society, and made visible and collected by an assembly like the Charter Convention, will undermine the legitimacy of both the Union and of the member states. The company maintains that the Charter must have as its 'core objective the preservation of a strong competitive environment for innovation and enterprise' (CONTRIB 194: 2).

CHARTE 4298/00 CONTRIB 170 is one of two contributions to the Charter Convention from the Confederation of British Industry (CBI), which is an organisation representing more than 250,000 large and small industrial and commercial employers. In its contributions, CBI is worried about the consequences of a binding Charter of extended fundamental rights. The CBI pictures this Charter as a starting point for a European Constitution by establishing 'binding rights at EU level in areas which have traditionally been the ultimate responsibility of national governments' (CONTRIB 170: 2). The CBI finds it particularly difficult to accept that such a development is initialized by a Convention rather than an IGC. 'It is not appropriate for the Convention to seek to shift the balance of power between the EU and member states through the development of a Charter to be incorporated into the Treaty. Any such shifts in sovereignty should only be proposed following full intergovernmental discussions' (CONTRIB 170: 6). According to the CBI the the legitimacy of the EU is based on the legitimacy of the member states, the intergovernmentalism of the cooperation, and the Union's ability to provide suitable conditions for business. Thus, the process itself and the contents of a possibly binding Charter of fundamental rights constitute a weakening of the Union's legitimacy.

CHARTE 4236/00 CONTRIB 109 is the contribution to the hearing of 27 April 2000 from the Union of Industrial and Employers' Confederations of Europe (UNICE), which is an influential and powerful employer's organisation which represent national organisations from 35 European countries (Philip and Gray 1996). The UNICE's contribution contains several elements that are in accordance with legitimation through performance. It underlines the importance of including the four freedoms (economic rights) in the Charter, while workers' social rights must be kept outside the Charter, just like the member states so far have kept these outside the legislative competence of the EU. The organisation wants the Charter to express Europe's wish to continue to develop a 'well-functioning market economy' (CONTRIB 109: 3), and demands that the Charter should not be given jurisdiction beyond the competences of the EU in the Treaties. 'Any

change should be a specifically inter-governmental matter' (CONTRIB 109: 3).

Legitimation through values

The group of organisations that from their functional type or characteristics were classified under 'values' made up more than a quarter of the organisations that submitted contributions to the Charter Convention. The a analysis of the content of the contributions shows that a slightly smaller proportion of the organisations made arguments that corresponds to the value strategy (see Table 3). The geographical distribution of organisations making arguments on legitimation through values is different from the outcomes strategy, as the all-European and the German or Austrian organisations are dominant. As Table 4 shows, the organisations that were defined as 'value-based', due to their functional characteristicsg, did not necessarily make arguments according to the value strategy. In fact, religious, federal and cultural organisations were as likely to reflect the rights strategy as the value strategy in their arguments to the Charter Convention.This proved a challenge in the analysis of the contributions to the Charter Convention, and may indicate that the criteria for interpreting the organisations' goals and purposes in relation to the different strategies were not developed clearly enough. But it also demonstrates the challenges to analyses using ideal–typical theoretical tools, as the three models used here. The examples given below indicate that some contributions made arguments that were in line with more than one of the strategies of legitimation. All in all, the contributions that reflected the value strategy in their contributions did so largely through their view on the EU as a value-based community – a European enterprise – and through the types of rights to be included in the Charter, cultural, political and social rights that defined who were Europeans. Let me give six examples of contributions that reflect this strategy.

CHARTE 4311/00 CONTRIB 178 is a contribution from the Kolping Society of Europe, a catholic social organisation. In its contribution the Kolping Society is concerned both with the contents of the Charter and with the Convention process. It focuses on the importance of the EU being more than an economic community, and that 'the future dynamism of the integration process also depends on achieving a consensus on common basic values' (CONTRIB 178: 3). According to the Kolping Society, the making of a binding Charter of fundamental rights is an excellent opportunity to debate the value foundations of the Union. The organisation does however express concerns for what it believes to be a low level of knowledge about this prosess among Europeans, and a low level of public debate on the subject. The Kolping Society calls for a broad debate on the values

underlying the European cooperation as a prerequisite for the legitimacy of the Union. 'The European people have enough in common in their way of thinking, their cultural expression, their concept of society and their attitude to life to agree on a common set of fundamental values' (CONTRIB 178: 5). There is no explicit mentioning in the contribution of which values these are, but the organisation underlines its position as one 'based on a Christian image of humankind' (CONTRIB 178: 6). Further, the contribution also states that a focus on economic interests and discussions on balance of interests ignore that a society primarily is based on common values, and that Europe therefore must discuss these values. The Kolping Society also states that the efficiency of democracy must not be 'paralysed by exaggerated participation rights' (CONTRIB 178: 6). The organisation is therefore not clear on how they think this broad debate on the value-foundation should be organised. When the contribution speaks of gaining consensus, it seems to concern already defined values that make up the European society. These issues indicate the weight put on common values in the contribution, and thus the reflection of a view of legitimacy through cultural community.

Two contributions that reflect the value strategy are CHARTE 4323/00 CONTRIB 189, one out of three contributions from the Conference of European Churches (CEC), which represents churches throughout Europe, and CHARTE 4468/00 CONTRIB 322 from the World Union of Catholic Women's Organisations (WUCWO). Both contributions are concerned with the inclusion of the common value-basis of the integration process to be included in the Charter, and that Europe's Christian tradition should be referred to as the foundation of these. The WUCWO claims that for the Charter to fulfil a function as clarification of the European community's spiritual and historical roots, the preamble of the Charter must include a reference to God. The CEC is concerned with social and cultural rights, and that these together with human rights should be given a prominent position in the Charter, as these reflect the Christian tradition. These arguments can be interpreted as human rights being derived from a specific tradition – Christianity and Christian values – rather than being universal. The WUCWO is also concerned with a broad debate on the contents of the Charter. The openness and transparency of the Convention method is welcomed, but concern is nevertheless expressed for what the WUCWO believes to be a low level of knowledge and awareness of the process in the populations of Europe. In its contribution the WUCWO therefore encourages the Convention to promote the process widely to the broad public, and the WUCWO binds itself to 'promoting discussion of the Charter within our churches and beyond' (CONTRIB 189: 4).

A contribution that argue the importance of values, but which reflects diversity above the common European is CHARTE 4237/00 CONTRIB 110, one out of three contributions made by the European Bureau for Lesser Used Languages (EBLUL), and which was this organisation's contribution to the hearing of April 27 2000. The EBLUL claims to speak on behalf of the more than 40 million EU citizens who speak an autochthonous language other than the main official language of the state in which they live. In this contribution the EBLUL focuses on the Charter's potential to ensure protection of linguistic rights and to secure the cultural and linguistic diversity that make up the common European heritage. According to the EBLUL the Charter must impose upon the member states the effective protection of linguistic diversity. The bureau is concerned with the cultural dimension of the Union, and that the common market may come into conflict with the principle of protection of local languages. 'There is a need for an instrument to balance harmonisation and integration with respect for linguistic and cultural diversity' (CONTRIB 110: 3). The EBLUL perceives of language as a value in itself. Its contribution is concerned with minorities' rights, but seems to emphasize the cultural and ethical value behind these rights more than justice, equality and morality. The main argument is that the legitimacy of the Union and of the Charter rests on the ability to strengthen the cultural dimension and the cultural diversity of the integration process.

A contribution which contains arguments in line with both the value- and the rights strategy is CHARTE 4398/00 CONTRIB 257 from the Leuenberg Church Fellowship (LCF), a federation of 96 European protestant religious/church societies. The contribution is only one page long, and proclaims the LCF's support to the Charter initiative, and proposes a specific wording for an article on freedom of faith and religion. The LCF believes that the Charter must secure freedom of belief both on an individual and collective level, and thereby give churches and religious communities the right to administer themselves within the laws of the member states. What kind of perception of legitimacy does this position reflect? The fact that the LCF wants a rights charter and that it seeks to secure the just treatment of religious communities and individuals' right to confess their belief, does reflect the rights strategy. On the other hand, the main argument informing the contribution from the LCF seems to be the right to seek 'the good' individually and collectively, and how the legitimacy of a community depends on the respect of these cultural rights. This contribution demonstrates that there is not necessarily an opposition between arguments that reflects these two strategies.

Another contribution that is consistent with elements from the same two strategies, is CHARTE 4104/00 CONTRIB 4, one of four contributions from the Permanent Forum of Civil Society, which makes a presentation of a suggested 'Citizens' Charter'. This contribution does not directly relate to the Charter of fundamental rights, but the suggestions and arguments in the contribution speak of the need for the Union to develop a rights charter. The contribution underlines the significance of introducing a charter which places the citizens at the centre of the European integration process and which 'defines what constitutes the common good' (CONTRIB 4:9), and thus counteract the common perception of the EU as merely a market and free-trade area. According to this contribution the Charter has to constitute the foundation of a community of citizens and states, and reflect the humanist character of the European civilisation. The contribution underlines the importance of the Charter as part of a constitutional pact which pins down the notion of the sovereign power of the citizens of the Union, and that representative democracy must be combined with participatory democracy in the EU. Central to this is the Union citizenship and its core elements: civil, political, social and economic rights. The identity of the EU must be made clear, and in addition to the notion of a value basis of 'the common good', the contribution states that 'identity… …cannot be separated from citizenship' (CONTRIB 4: 9).

Legitimation through rights

Based on the information available on the purpose and characteristics of the orgganisations contributing to the Charter Convention, around 55 per cent of these can be classified as 'rights' promoters (see Table 3). This includes organisations promoting human rights and justice, and those representing labour, weak groups, environmental protection etc. When analysing the content of the contributions, almost two thirds of the total number of oragnisations presented arguments that corresponds to the strategy of legitimation through rights (see Table 4). The geographical distribution of these organisations was similar to the geographical distribution of the total number of organisations contributing to the Convention. Organisations classified as 'rights' promoters mainly (84 per cent) made arguments reflecting the rights strategy. When examining the total number of organisations that presented arguments in line with the rights strategy, one fifth of these were organisations whose characteristics linked them to the value category, as has already been commented upon in the previous section. The organisations reflecting the rights-based strategy mainly saw the Charter of Fundamental Rights as increasing the legitimacy of the Union if it is made binding and includes all categories of rights (political, social, cultural and economic), and further that the process of drafting the Charter should include structures for

representation of citizens and real influence for civil society. Let me illustrate this with some examples.

The first four are contributions which contain several of the criteria outlined above, and they are clear examples of a vision where the EU's legitimacy depends on the Charter to secure all types of rights, in particular civil and political rights, and on the Convention's inclusion of civil society through participatory rights. CHARTE 4232/00 ADD 1 CONTRIB 106 is one of four contributions to the Convention from the International Federation of Human Rights (FIDH), an international human rights organisation. This contribution was the presentation made by the FIDH at the hearing of 27 April 2000. The contribution's core argument is that all human rights are universal, indivisible and interdependent. The FIDH thus asks for the Convention to draw up a Charter containing all categories of rights, and that these should be applicable to all individuals on the EU's territory. Exceptions from this rule should be few, for instance voting rights pertaining only to citizens of the Union. The federation asserts that human rights are formative of people's identity. Human rights should be based on universal values, not on particular European values. The FIDH argues that the Charter shouød contain all types of rights (civil, political, economic, social and cultural) and that they should apply to all Union policies: 'the matter would be of a Charter of fundamental rights of the European Union – and not of the European Communities – covering consequently the three pillars of the European Union Treaty' (CONTRIB 106: 6).

The European Trade Union Confederation (ETUC), an European network of trade unions representing more than 46 million members, and the Platform of Social NGOs, a cooperation between 21 European NGOs, ran a common campaign on the Charter, including broad debates in their national organisations and presenting six common contributions to the Convention (in addition to two contributions from the Platform). CHARTE 4286/00 CONTRIB 158 is one of these common contributions and one where the Platform–ETUC presents a list of demands regarding the content and scope of the Charter[36]. According to the organisations behind this contribution, the following elements has to be included in the Charter for the EU to evolve from economic cooperation into a citizens' Europe: that the Charter reflects the universal and indivisible character of fundamental rights; that the Charter applies to all 'citizens, residents, migrants, refugees, undocumented persons' (CONTRIB 158: 3); that the Charter contains civil, political, social, cultural and economic rights; that the Charter is made binding, is being integrated in

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[36] The contribution is a summary of CHARTE 4194/1/00 REV 1 CONTRIB 75.

the Treaties, and is enforced by the ECJ. The Platform-ETUC is further concerned with the reinforcement of participatory democracy at European level through increased transparency, access to information and participatory rights. These principles should also be applied in the Charter process, in addition to allowing the organisations of civil society to have their say in votes on the proposed Charter.

CHARTE 4496/00 CONTRIB 346 is one of two contributions from the Liaison Committee of the NGOs enjoying consultative status with the Council of Europe, which comprises 407 different NGOs. The contribution presents a few demands to the Charter Convention. The NGOs behind this contribution asks for the value basis of the Charter to be built on universal principles such as solidarity, equality and human worth rather than culturally specific values. As an example the phrase 'religious heritage' must be replaced by 'spiritual heritage' in the preamble of the Charter. The NGOs are also of the opinion that the Charter should reflect the universal and indivisible character of fundamental rights, and thus having to include economic, social, cultural, civil and political rights. The Charter should also be made binding by inclusion in the Treaties. The NGOs are also concerned with establishing the principle of participatory democracy, and that the Charter must include a 'recognition of the right to civil dialogue granting organised civil society the right to information, communication and consultation in order to participate, propose, negotiate and verify political processes' (CONTRIB 346: 2).

CHARTE 4407/00 CONTRIB 264 comes from the Armutzkonferenz (Österreichisches Netzwerk gegen Armut und Soziale Ausgrenzung), an Austrian organisation fighting poverty and social injustice. The contribution reflects the rights strategy on all criteria outlined above. Some examples are the demands from the Armutzkonferenz that the Convention produces a Charter which is binding, which includes social and political rights, and which has competence over all policy fields of the EU. Concerning the process of drafting the Charter, the contribution suggests prolonging the process to allow for a wider and more comprehensive debate on the Charter among the peoples of all member states. The core element of this contribution is an understanding of the EU as a political project, as a community based on democracy, the rule of law and human rights. According to the Armutzkonferenz, a Charter of social and political rights might contribute to counteract the image of the EU as an economic project: '...dass die Bürgerinnen und Bürger "Europa" nicht bloss als Wirtschaftsunion, vielmehr als eminent politisches Projekt erfahren – als Gemeinschaft, die für Demokratie, Rechtstaatlichkeit und Menschenrechte steht' (CONTRIB 264: 2).

CHARTE 4290/00 CONTRIB 162 is the contribution from Amnesty International which was presented at the hearing of 27 April 2000, and is one of five contributions from Amnesty. The contribution mainly reflects the rights-based strategy, but is at the same time an illustration of the focus of many of the contributions from civil society on a few elements of the Charter, and that many contributions speaks to only one or two of the criteria set out under the strategies above. Amnesty underlines the indivisble and universal character of human rights. The organisation asks for the Charter to include all types of rights, and that the Charter should strengthen these rights by including new rights and make them binding for all individuals. A Charter meeting these criteria should be made binding with a possibility for individual complaints to the ECJ, and that the Charter 'applies to all the activities of the EU institutions, the entities created under the TEU, member states when acting within and also outside the sphere of EC/EU law and private parties acting within the consent or acquiescence of governments' (CONTRIB 162: 17).

Let me briefly make an illustration with three contributions from women's organisations. CHARTE 4132/00 CONTRIB 27 is one of six contributions from the European Women's Lobby (EWL), the largest women's organisation in Europe, representing more than 2700 member organisations; CHARTE 4314/00 CONTRIB 181 is a contribution to the hearing of 27 April 2000, and is one out of eight contributions from the Association of Women of Southern Europe (AFEM), a federation of women's NGOs from the Southern member states; and CHARTE 4364/00 CONTRIB 227, one of two contributions from the European Centre of the International Council of Women (ECICW), representing members from 17 European countries. These three contributions are similar in that they raise the same demands on gender equality, and that they reflect one or two of the criteria formulated under the rights-based strategy above. All three contributions state that the Charter must include rights on gender equality in all areas, and that the Charter must also include formulations on the achievement of equality if necessary through temporary 'positive measures' favourising women. Justice is crucially dependent of the end to discrimination on the basis of gender, as women are not to be considered as a group, but rather as half of the population, and that many women 'suffer from multiple discrimination' (CONTRIB 27: 3). In addition to this both the AFEM and the ECICW emphasize the universal and indivisble character of human rights, and maintain that the Charter should comprise all types of fundamental rights and be made binding and 'enforceable'. The ECICW is also concerned that the universal character of rights implies that the Charter must apply to all people on the territory of the Union and for all areas of the EU cooperation. The

EWL also underlines the imprortance of involving civil society in the work of the Convention, and believes this to be particularly important as the composition of the Convention is biased, with only 9 of 62 members being women.[37] This weakens the legitimacy of the process and will affect the result: '… the lack of women in the Convention will certainly affect the outcome of its work. The EWL fears that women's interest may be overlooked in the elaboration process' (CONTRIB 27: 2).

A contribution that has elements of both the value strategy and the rights strategy is a contribution[38] to the hearing of 27 April 2000, and is one of three contributions from the Union of European Federalists (UEF), an organisation of individuals from 10 of the EU member states, working for a federal, democratic Europe. The UEF states that the Charter should include all categories of rights (civil, political, social, economical and cultural), and that it should be made binding with the possibility to appeal before the ECJ. The UEF sees the Charter as an important step in the constitutionalisation process of the EU, and welcomes the Convention method (with participation from the EP, national parliaments and consultation with the organisations of civil society) as a 'democratic move forward compared to the old diplomatic method of intergovernmental conferences' (CONTRIB_UEF: 2). Further, the UEF is concerned with the role and importance of values as the foundation for European integration and cooperation, and believes that the Charter may contribute to the development of an ethical community. 'Such a Charter will undoubtedly contribute to the transformation of the Union into a community of values. Europeans need to have a point of reference linked to a clear set of values…' (CONTRIB_UEF: 1). The contribution from the UEF does, according to the criteria formulated, reflect both the value- and the rights-based strategies. It is important to note however that this contribution, in contrast to some others, does not speak of an already existing set of values on the Union. The arguments made in this contribution do rather suggest that rights may form the conditions necessary to develop such a set of values, not the other way around. This contribution therefore fits very well with the strategy of legitimation through rights, as this was formulated above.

The main vision of the EU in the contributions from civil society to the Charter Convention was one that moves away from the economic focus of the Union to a vision of a polity which acts as an independent granter of rights to its citizens. The fact that one fourth of the NGOs reflect a vision

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[37] This number is in fact not correct, as the Charter Convention had 10 female members.
[38] While this contribution is available on the Convention website, for some reason it wasn't given a number, thus I have labeled it 'CONTRIB_UEF'.

more in line with the value strategy, does not weaken this conclusion, The NGOs under this strategy also expressed wishes of a deeper community, the difference being whether this community should be based on the (re–) discovery of common values and norms or whether it should be based on a rights-based development of a community and identity of the European integration project. The NGOs mainly argued for a European Constitution, so let us move on to the second Convention which drafted the Treaty establishing a Constitution for Europe.

The Convention on the Future of Europe
Unlike the Charter Convention where all contributions from civil society have been analysed, a selection has been made among the contributions from the Laeken Convention, due to the considerably larger number of contributions submitted to this Convention. The selection has been based on the functional character or purpose of the organisations making contributions. While the analysis thus can not conclude on whether the total number of contributions to the Laeken Convention reflected one of the three strategies of legitimation, it will however compare the arguments of selected contributions to the Laeken Convention with the arguments of contributions to the Charter Convention. A number of organisations contributing to both Conventions have therefore been included in the analysis.

Although being much larger, the group of organisations that contributed to the Laeken Convention was very similar to the group that contributed to the Charter Convention, according to the organisations' geopgraphical scope and functional character or purpose (see Tables 1 and 2). The assumption is that there was also a similarity of arguments, as the first Convention process was also understood as a constitution-making process by the contributing organisations. The following examples will give an indication as to what arguments were put fourth by civil society organisations to the second Convention, and whether these differed from the ones of the first Convention. The main basis for the analysis is the written contributions put forward to the Forum. As already mentioned, some NGOs were allowed to give presentations at the Convcention plenary session on 24–25 June 2002. The transcripts from these session show that the arguments presented there were very similar to, and mere summaries of, the written contributions made by the same organisations.

Legitimation through results
A group of organisations that in the Charter Convention promoted this strategy in their arguments were the business NGOs, representing industry and employers. One such organisation which made contributions to both

Conventions is the Confederation of British Industry - CBI. Its contributions to the Charter Convention (see above) matched well with the characteristics of the first strategy of legitimation. The two contributions submitted by the CBI to the Laeken Convention reflect the same vision of the Union, focussing on the economic and performance character of European cooperation. The CBI also stropnlgy oppose the constitutional process as long as it may hamper what the CBI perceives as benefits from this. In the first contribution (0484_r_en) the confederation posits its reaction to the agreement on the new 'treaty' (as the CBI systematically labels the text elaborated by the Convention), emphasizing the importance of the text including competitiveness as an EU objective. The CBI is however critical towards several elements of the text, among others the enhanced role of the Union in co-ordination of member states' economic policies, and the 'new "citizens' clause" enabling EU citizens to request legislation on specific topics to be brought forwards' (0484_r_en). The second and longer contribution from the CBI (0484_r1_en) is clearly reflective of the performance strategy, being concerned with benefits, economics and market, and opposing supranational policy hampering these benefits. In short, the CBI views the EU as a market, and believes that the Union should have effective powers to 'deliver a truly Single Market', but that any policy initiatives beyond this must be built on intergovernmental consensus. The CBI thus opposes any tax harmonization that can hamper economic benefits for industry. It also opposes the inclusion of the Charter in the Constitutional Treaty which may undermine existing directives enabling the well-functioning market. The CBI welcomes the Charter as a declaration, but states clearly that an incorporation of it will risk transferring power to the ECJ, something which risks undermining the legitimacy of the Union as it may undermine the method of intergovernmentalism that is based on 'discussions between democratically elected Governments' (0484_r1_en).

Another NGO which contributed to both Conventions is the Union of Industrial and Employers' Confederations of Europe – UNICE, which submitted six contributions to the Laeken Convention. The UNICE's arguments are the same as those presented to the Charter Convention, focussing particularly on the need to keep the Charter outside of the Constitutional Treaty, and on the need to assure the continued pivotal role of economic integration in the EU. Concerning the Charter, the UNICE still believes that 'the existing text of the charter is not fit to become legally binding' (0218_c_en). Regarding the main tasks of the Union, the UNICE asks for a refocus, for the Union to do less, regulate less, and to do this through effective institutional structures, e.g. strengthening the Commission. The UNICE states that QMV (qualified majority voting) should be the rule,

but that exceptions to this should be fields such as social security. Early on in the Laeken Convention's work, the UNICE expressed their concern for an imbalance in the direction of Social Europe, and that the Convention's early drafts 'distorts the balance between social and economic objectives' (0218_c4_en). The organisation emphasizes the importance of including business interest in the decision-making processes of the EU, allowing for business to provide 'impact assessments' (0218_c3_en). While the UNICE praises the method of including civil society in hearings of the Convention, it underlines the difference between civil society consultations and social dialogue involving business/employers' organisations. This dialogue should not be extended to other areas or players in civil society as 'our role is different from organisations representing civil society' (0218_c3_en). The UNICE participated actively in the context of the Laeken Conevntion, particularly through its president Georges Jacobs. Many of their main points of argument were incorporated in the text, thus the final text presented by the Convention was considered by the UNICE to strike a 'satisfactory balance between economic and social aspects' (0218_c5_en).

A third business or employer's organisation making contributions to both Conventions was Eurochambres, presenting one contribution and two short comments to the Laeken Convention. The main point made by Eurochambres is that one of the main challenges facing the Convention was the need to ensure the success – i.e. promoting the benefits – of the forthcoming enlargement of the Union. Eurochambres emphasizes the need for the Convention to present proposals that enhance the modern, dynamic and democratic European integration project, and to ensure that the enlargement does 'not lead to weakening of joint ambitions in the economic area' (0188_c_en). To ensure the realisation of this objective, Eurochambres see 'participatory democracy as a keystone of European integration', and suggests dialogue with civil society to be promoted through a targeted, structured and representative system of consultations, and through the introduction of 'systematic consultations of socio-economic actors having indisputable expertise' (0188_c_en). This consultation procedure should also include preparatory work on future treaty revisions. Eurochambres is eager to promote its own place in such a structured consultation process. The organisation claims that traditional socio-economic relationships are outdated, and that SMEs[39] (represented by Eurochambres) is now the main driving force in European economy. In addition to this, Eurochambers claims to represent the general interest of the economy, being free from sectoral interests, and to be the only organisation carrying out horizontal actions in

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[39] Small and medium sized enterprises.

support of the economic development of the regions. This makes the organisation particularly suited for assessing costs and impact of decisions taken at EU level, and 'legitimises their participation in the consultation process' (0188_c_en). The arguments set forth by Eurochambers are strongly focussed on the impact and costs of EU decisions, and reflects the first strategy, basing the legitimacy basis of the Union on its results.

An organisation that contributed to the Laeken Convention but not to the Charter Convention was the Federation of European Employers (FedEE). The FedEE's contribution focussed on detailed amendments and textual modifications to specific articles in the draft Constitutional Treaty which concerned fields of interest for business. The main argument in the contribution is that the Constitutional Treaty and the Charter included in it should not contain provisions that hinder competition, free trade and the prosperity of industry and private business. All measures hindering this should be rephrased and made less concrete, including: minimum standards and minimum wages; positive measures for gender equality; taxation provisions; and any other anti-competitive activities. Free trade and efficient and business-friendly economic policies are main objectives of the Union according to the FedEE. In short, the organisation argues for an EU that foremost is an economic project, and which should not have competences that hinder this: 'the Union shall not have competence to impose administrative, financial and legal constraints in a way which would hold back the creation and economic operation of small and medium sized undertakings' (0404_c1_en).

Even clearer and more outspoken arguments of the performance or economic strategy are found in the contribution from the Campaign for an Independent Britain, who made only one contribution to the Laeken Convention, and none to the Charter Convention. The Campaign is an organisation whose purpose is to withdraw Britain from the EU and to downscale the Union into a free trade regime. The Campaign sees the Laeken reform process as a step towards more powers centralised at the EU institutions and to the inevitable creation of a United States of Europe. The organisation takes a clear stand against the EU and its institutions as non-democratic, as opposed to the democratic procedures at the national level. It claims that the peoples of Europe are being led into this against their own will, as the British people have been since their vote in 1975 'simply deciding to stay in a free trade area' (0185_r_en). The Campaign for an Independent Britain proposes a model of cooperation only in those policy areas where there is a clear benefit from cooperation in line with each nation's interests. The organisation's position is a clear example of the outcomes strategy, and it speaks directly to

the downscaling of the Union into a free trade regime and to the need to resist the development of EU comepetence in other areas at 'all costs' (0185_r_en). 'Those powers not necessary for free trade between the nations must be relinquished and returned to the Member States who would then become responsible for making bi-lateral or collective agreements with other states in areas of policy where they think fit' (0185_r_en).

Legitimation through values
The value strategy is reflected in the arguments made by the following four organisations that made contributions to both Conventions. The first one is the Leuenberg Church Fellowship (LCF), an organisation of protestant churches. The LCF 'welcomes the readiness of the European Union to be transformed from an economic community into a community of values' (0273_c_en) and it speaks of a Europe of common values. These values are religious and spiritual principles such as justice, reconciliation, responsibility and tolerance. The LCF believes that these principles is shown in practice through a socio-economic solidarity which is particularly important facing the enlargement of the EU into Eastern European countries with common traditions and convictions. The value community of the EU is thus grounded in Christianity. The question of a possible enlargement to countries with Muslim populations and how this will affect the Europe of values is a question left untouched by the LCF. Further to this, the LCF makes a strong argument for including a reference to God in the Preamble of the Constitution, which would send a strong signal about the EU as a Christian community. This is a strong reflection of legitimation through values: 'A European Union that understands itself to be a community based on moral values must recognise that it is founded on assumptions which it cannot fulfil on its own. It follows that, in the Preamble to a future European Constitution, there should be an indication of the importance of religion for Europe' (0273_c_en)

The European Bureau for Lesser Used Languages (EBLUL), claiming to speak on behalf of the more than 40 million EU citizens who speak an autochthonous language other than the main official language of the state in which they live, presented four contributions to the Laeken Convention. The EBLUL followed the Convention process closely, and included references in its contributions to the involvement of civil society through plenary session and the contact groups, and to the work of the Convention working groups (0017_r1_en). The main argument made by the EBLUL to the Convention is the need to ensure the sufficient protection of linguistic diversity in 'the new EC treaty' (0017_c_en), and to give substance to Article 21 on non-discrimnation in the Charter of Fundamental Rights. The bureau

argues that linguistic diversity and respect is an essential part of the cultural and linguistic heritage which is a key element of European identity. According to the EBLUL this can only be achieved through a specific article on the non-discrimnation of languages, as 'all European languages are equal, whatever they be widely or lesser-used' (0017_c_en). The EBLUL insists that the enlargement of the EU should be based on criteria that protect minorities, stating that the criteria in the draft Constitutional Treaty prepared by the Convention does not include as strong protection as the Copenhagen Accession Criteria. The bureau supports the inclusion of the Charter in the Constitutional Treaty and the establishment of the legal personality of the Union. The EBLUL is concerned with the cultural and identity aspects of the integration project, and it recommends that the Constitutional Treaty should go further in making language diversity protection an EU level task, introducing QMV in the Council on cultural policies.

The Union of European Federalists (UEF) submitted eight contributions to the Laeken Convention. The UEF argued for the Convention to be able to act as a European Constituent Assembly working out a European Constitution creating a European Federation. The organisation stressed that this role required a backing from the European public, including the European and national political institutions, parties, civil society and the broad public. The UEF itself claimed to launch areans for fostering this debate on the Convention's work. The organisation portrays a vision of a federal Union, built on a constitution securing citizens' rights and setting up a federal political system. Their vision is one of an EU built on rights, of a European identity stemming from these rights more than from the cultural diversity that they are intended to protect. The UEF proposes a political system with the Council as the second chamber in a two-chamber parliamentary system, and with the Commission as the executive branch of European government. The Commission should be elected from the EP and its members should not be rotatetd out of office. The UEF believes that the Commission President and not the Council President should head the EU, because he/she 'is accountable to and can be removed from office by the European Parliament' (0074_r2_en), and is more efficient, legitimate and accountable than the Council President. The organisation stresses the need to foster a common public, with European political parties, common electoral campaigns, a common European political debate and elections to the EP which determine the composition of the Commission as the executive branch of government. Towards the end of the Convention's work the UEF expressed its content with many of the provisions of the Draft Constitutional Treaty, but nevertheless points to several important shortcomings of the text. Among these are the failures to include all policy fields under the co-decision

procedure and to allow for a continuation of unanimity requirements for several policy fields.

The Kolping Society of Europe made only one contribution to the Laeken Convention. This was submitted early in the process, and was a comment on the draft Articles 1-16 of the Constitutional Treaty. The Kolping Society supported the incorporation of the Charter in the constitutional treaty, and the legal force of it. The contribution clearly advocates a view of the EU beyond that of the problem solving one. The organisation's arguments reflect the value strategy, arguing for the constitutional treaty to extend the Union's goals to include the respect for human life, family and marriage, and to safeguard the rights of churches and religious communities. The Kolping Society also argues for 'an express reference to God in the preamble' 0087_r2_en). It believes that this will make it clear that there are rights which 'exist prior to the State order which neither the State nor a State community can interfere with' and that this reference will extend people's freedom without necessarily 'oblige the citizens in any way to believe in God' (0087_r2_en). This is a clear example of a view of the Union as a community founded on certain values that are common to its citizens.

Let us briefly look at two organisations that did not make any contribution to the Charter Convention[40] but submitted written contributions to the Forum of the Laeken Convention. The first of these is the European Network Church on the Move (EN), a European branch of what the EN calls a worldwide Catholic reform movement. Contrary to what could be presumed due to arguments by other religious movements, the EN does not argue for religious or spiritual references in the Constitutional Treaty. On the contrary, the EN describes itself as an organisation promoting human rights and democracy, and the arguments presented does not clearly reflect either the value or the rights strategy. The organisation is concerned about the economic bias in the EU, and wants the EU to move from a mere market towards a 'community of ethic and democratic values' (0093_r_en). The EN argues for the EU to set up a political organisation that will enable the development of a democratic social model. Important steps towards improving the social character of the EU would be to ratify the European Convention on Human Rights and the European Social Charter, and to give binding legal status to an improved Charter of Fundamental Rights. The contribution can be seen to portray the idea of an EU based on a common social and democratic model, one that defines what it is to be European.

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[40] The European Network Church on the Move made a statement on the Charter in April 2001, but this can not be seen as a contribution to the Convention which had by then finished its work.

What is clear is that the EN does not want any religious character of Europe. The organisation asks for the Constitution and the political institutions of the Union to (continue to) be non-confessional and secular, and states that secularism is a necessary prerequisite for building a peaceful and democratic Union. 'Secularism is a basic principle of democracy and a condition of social peace, cohesion and inclusion. It should become a common value of the EU. It excludes a reference to any divinity or religious rule in the constitutional order. It calls for a legal order under which religious, spiritual and philopsohical organisations may and have to live together in freedom, equality and brotherhood' (0093_r_en).

An organisation that portrays a clear vision of what defines Europe and separates it from the rest of the world, and a spoken preference of values and community over rights in the EU, is the Associations Familiales et Culturelles (AFC), which made three contributions to the Laeken Convention. The AFC see Europe as a geographically defined region which coincides with a cultural region. The organisation warns against the risk of destroying the Union if enlargement should pass these borders. The EU of today is made up of member states that search for harmony and share the same worldview and culture. Without mentioning it directly, the organisations would thus most likely oppose Turkish membership on both geographical and cultural grounds. 'Que l'Europe puisse s'élargir est dans l'ordre des possibles, mais il y a une limite à ne pas dépasser. Cette limite est fixée géographiquement, d'une part et culturellement d'autre part. ... L'élargissement de l'Union constitue un défi, il y a une risque de paralysie' (0236_r1_fr). Another concern of the AFC is that the Constitutional Treaty should not be subjected to popular approval thorugh referendum. Such a process would put the European integration project in peril. In stead of assuring the desired unity, peace and stability, it would risk increasing divisions, suspicion and conflict in Europe. The organisation argues for a European Constituant Assembly to work out and agree on the text of the Constitution. The AFC claims that referendums would have made the European integration process impossible from the start: 'imaginons in seul instant si les fondateurs de l'Europe eussent fait appel au referendum, jamais l'Union Européenne n'aurait vu le jour' (0236_r2_fr).

Legitimation through rights
The Permanent Forum of Civil Society was among the organisations with several contributions to both Conventions. Like the arguments set forth in the contributions to the Charter Convention, the fifteen contributions submitted by the Permanent Forum to the Laeken Convention reflect both the value and the rights strategy, although the latter is more dominant. Several of the contributions focus on the Union as founded upon a common

heritage, past and future, and on the solidarity among Europeans. Enlargement is portrayed in this light, but perhaps more as securing fundamental rights for all Europeans. Enlargement is said to be about fostering democracy and securing rights, and not 'merely a question of timetable or money' (0060-c2_en). The contributions speak about the need to develop the EU on a federal model, with increased own resources, on European citizenship, and respect for specific identities and cultures, on 'solidarity among European peoples while respecting their historic personality, their dignity and their liberty within freely accepted common institutions' (0060_c5_en). Although focussing on the above mentioned and several other themes, a dominant theme in the contributions from the Permanent Forum of Civil Society is the *process* of constitution making. The organisation is positive to the work of the Convention as compared to IGCs, and it argues for the principles of participatory democracy to be adopted in the Constitution. The work of the Convention is described as an open process which resulted in a large-scale European debate and a result which secured consensus among the Conventioneers and also among most of the NGOs 'who closely attended the Convention's work' (0060_c11_en). The legitimacy of this process is vital for the legitimacy of the Constitution, and the organisation therefore strongly opposed a reopening of the work by the IGC. It argues that the only legitimate process after the Convention's work would be a European-wide binding referendum where citizens were allowed to express their wishes. In an open letter to the President of the EP, Pat Cox, the organisation states that 'it would be inappropriate to entrust diplomats with the elaboration of – or even the perfecting of – a Constitution whose genuine nature and source of legitimacy are substantially different from the nature and legitimacy of an international treaty. Should this nevertheless happen, it would constitute an intolerable offence against democracy both in Europe and the Member States, and it would also risk enthusing the civic society's opinion against an inappropriately elaborated Constitution' (0060_r12_en).

The most active (at least in terms of number of contributions) women's NGO in both Conventions was the Association of Women of Southern Europe (AFEM). As in the first Convention, the AFEM focused on several aspects of the work of the Laeken Convention, such as the question of social rights. The AFEM stated that the draft Consitutional Treaty privileged the economic aspect of the Union to 'the detriment of its social aspect' (0005_c9_en). The association also suggested a number of improvements that should be included in the Charter before making this a binding part of the Constitution, on: gender equality; family life; children's rights; rights against expulsions, and; scope of the Charter. This is in line with the dominant

argument in the thirteen contributions made by AFEM to the Laeken Convention, that the Constitutional Treaty is all about securing fundamendal rights for everyone, i.e. arguing for the universal character of these rights. 'A European Constitution worthy of the name is not merely a division and definition of competence. It is mainly an effective guarantee of the fundamental rights of women and men' (0005_c2_en). These rights are universal, and should be given not only to citizens[41], but: 'must concern the whole population of the Union – men and women citizens and all other women and men who are on Union soil' (0005_c_en).

The Platform of European Social NGOs campaigned with the European Trade Union Confederation (ETUC) in the first Convention. The Platform made three contributions to the Laeken Convention, in addition to two contributions as part of the Act4Europe campaign by the Civil Society Contact Group. The Social Platform consists of 38 networks of NGOs and claims to be representing 1,800 organisations[42]. The arguments presented by the Social Platform clearly reflect the rights-based strategy. First and foremost the Platform underlines the universality of fundamental rights: 'the European Union has the responsibility to ensure to all individuals the full respect of his/her fundamental rights' (0036_c_en). The Platform argues that the Convention's work should reflect the 'true values of Europe', that is a social development model based on equal access for all to fundamental rights. The Platform insists that the Charter should be made a binding part of the Constitution, but that it needs improvement in important fields, such as for social rights, to avoid a bias towards economic rights. Further, the Convention should ensure the role of civil society in the drafting process, a role which should also be reflected in the Constitution. According to the Social Platform this is particularly important for NGOs like the Platform, who represent the views of those 'experiencing poverty, exclusion and inequalitites' (0036_c_en). The Platform claims that their 'contribution represents the views and aspirations of millions of people in Europe and we call on each individual member of the Convention to listen to these voices' (0036_c_en). The Social Platform's arguments can be summed up with its view on the three central elements of the construction of the EU over the course of the recent years: respect of fundamental rights; development of policies encompassing social, environmental and economic aspects, and; support of the role of civil society organisations.

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[41] AFEM also stresses that the term 'citizen' does not include women in the languages where the term has a masculine and feminine gender.
[42] According to Mr Giampero Alhadeff, representing the Social Platform at the plenary session of the Convention on 24 June 2002.

The Eurogroup for Animal Welfare did not contribute to the work of the Charter Convention but submitted three contributions to the Laeken Convention. The Eurogroup claims to represent the leading animal welfare organisations in the EU. It argues for the strengthening of animal rights in the Union, and expresses its concern that economic rights and economic interests that have important implications for the treatment of animals are favoured at the expense of animal rights. While economic rights and interests have a strong status in the Union policies and goals and are efficiently dealt with at EU level, animal rights are not ensured at the EU level and lack sufficient protection. The Eurogroup wants to strengthen animal rights and give them the same status at the EU level as those economic rights that so strongly affect the welfare of animals. 'To provide for a proper legal basis, animal protection should be included as an objective of the EU and integrated in all relevant policy areas' (0130_c1_en). The arguments put forward by the Eurogroup favour universal fundamental rights towards the economic aspect of the Euroepan integration process. The draft Constitutional Treaty falls short of achieving this, and the Eurogroup is 'very disappointed that, although various amendments from the Convention to include animal protection in the objectives – Article 3 – this has not been taken up in the Praesidium's draft text' (0130_r2_en).

One of the most active contributors to the Forum of the Laeken Convention was the Green 8, a network of eight international environmental organisations[43] represented in Brussels. The Green 8 submitted twenty contributions, several of which were detailed and large contributions indicating that the Green 8 followed the Convention's work closely. The main themes in the contributions by the Green 8 are sustainable development and environmental protection, and transparency and participatory democracy. 'The Constitutional Treaty should guarantee transparency in the Union's decisionmaking and citizen rights to information, consultation and appeal, and retain the objectives of sustainable development and policy coherence and the principles of environmental protection' (0058_r1_en). Recurrent in the contributions is the argument of universal fundamental rights, and that the protection of basic fundamental rights should underlie all policy areas in the EU. Environmental protection should guide economic policy, not the other way around, to ensure 'harmonious, balanced and sustainable development of economic activities'. The Green 8 further states that 'the majority of policies need to be updated and made consistent with the objective of sustainable development' (0058_r14_en). Another recurring

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[43] Birdlife International; Climate Action Network Europe; European Environmental Bureau; Friends of Nature International; European Federation for Transport and Environment; Friends of Nature Europe; Greenpeace; World Wildlife Foundation – WWF.

theme in the contributions from the Green 8 is the recommendation to abolish the Euratom Treaty which is said to be undemocratic and which undermines the search for renewable energy sources. The Green 8 welcomes many developments in the draft Constitutional Treaty, but at the same time claims that it does not meet the network's requirements, particularly in the approach to environmental protection and participatory democracy. In the opinion of the Green 8, the Convention failed to make a Constitution which serve as 'a beacon for the European Union in its journey into the future, and would confirm the EU's global leadership in protecting the environment and promoting sustainable development' (0058_c12_en).

Conclusions

What are the main findings of the analysis as regards the framework for participation, the kind of organisations that contributed to the two Convention processes, and finally the arguments that they presented? Firstly, the involvement of civil society in the Charter Convention was marked by it being the first of its kind. The Laeken Convention did not cure these 'children's diseases' characterised by a lack of feedback on contributions, tight deadlines and high speed of the work. Although the Laeken Convention went further than the Charter Convention in establishing the Forum and the contact groups, the involvement of civil society still did not go beyond a one-way communication. This might be due to the increased complexity and scope of the issues that were discussed and thus the limited capacity to cope with input from civil society in a manner satisfying the criteria of the right to be heard and to be involved. Both Conventions had to find suitable frames for the involvement of civil society based on the mandates from the European Council. The resulting procedures opened up for an involvement of voices and arguments rather than that of physical representation. The findings suggest that the structures may have favoured an elite of large organisations with established organisational capacities at the European level. However, the openness did enable all sorts of organisations (and in the Charter Convention even individuals) to make statements by means of the official channels established by the Conventions and its secretariats. For the bulk of organisations (and individuals), the communication was one-way, and only a few organisations succeeded in opening a dialogue with members of the Conventions. The logic behind the hearings and the publication of contributions from civil society can be seen as reflecting and enhancing the debates on the EU's constitution-making process that were emerging among organisations across Europe. As Lombardo (2003: 14) puts it, the Convention was 'listening without committing to an answer'. While a number of civil society organisations made their arguments available to the Convention

members – as well as to other actors and organisations – the processes were not marked by a structured participation from civil society.

Secondly, which parts of civil society contributed to the two Conventions? According to geographical scope and functional type, the organisations that contributed to the second Convention were quite similar to the ones contributing to the Charter Convention. A range of national and regional organisations took part in both processes, but contributed mainly to one of the two Conventions only. More than one third of the organisations were all-European, representing NGOs from several European countries. Among the 66 organisations that made contributions to both Conventions, almost two thirds were all-European and were large federations with permanent staff and secretariats based in Brussels. They make up an elite of organisations that conceives of the Union as a highly relevant political arena, and that follows closely EU decision making processes[44].

The functional distribution of organisations was also similar for the two Conventions. The only major exception was that the proportion of rights-based organisations was smaller in the Laeken Convention, and that the proportion of organisations from academia was much larger. Around half of the organisations contributing to both Conventions were characterised as promoting rights issues. This group thus differs from the organisations that lobby day-to-day decision making in Brussels. While this latter group is dominated by organisations representing or promoting economic interests, more than three quarters of the 'Convention lobbyists' were characterised as non-profit value or rights organisations. Business organisations were almost absent in the Conventions, or at least were not active in sending written contributions to the Conventions. This may be explained by the character of business lobbying in Brussels, which rely as much, or more, on contacts with EU institutions to influence policies than on participating in formal structures of dialogue (see e.g. Eising 2005). It may also be due to business organisationss exploitation of the 'national route' when trying to influence the institutions represented in the Convention or individual Convention members. It is interesting to note that only two of the ten EU level business associations which, according to Greenwood (2003: 84), have more than 20

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[44] Some researchers have pointed to the fact that there exists a division of labor between the European/EU organisations and the national organisations: 'EU associations concentrate their activities on the early stages of the policy making cycle whereas many national associations come only in when European policies are implemented in the member states' (Eising 2005: 30). However, this is valid for day-to-day policy making in the EU, and one cannot (automatically) assume this hyphotesis to be valid also for the constituion-making process.

full time employed staff made written contributions or participated at hearings of the two Conventions.

Finally, what kind of arguments was made by the civil society organisations contributiong to the Charter and Laeken Conventions? The analysis shows that the organisations presenting arguments consistent with the strategy of legitimation through outcomes conceive of European cooperation and integration as legitimate only when solving common problems that are beyond the capacity of the nation-states alone. Organisations that presented arguments consistent with the strategy of legitimation through values did so largely based on their view on the EU as a value-based community, a *European* project, and reflecting the types of cultural, social and political rights they perceive as defining who are Europeans. The organisations reflecting the rights-based strategy in their arguments mainly see the legitimacy of the EU as depending on binding political, social, cultural and economic rights, and further that the process of reforming the Union should include structures for citizens' representation and real influence for civil society. Although visions consistent with all three strategies of legitimation were presented by the civil society organisations, the most prevalent vision evident from the contributions was one that moves away from the economic focus of the EU towards a deeper community. This community was depicted as based on either the (re-)discovery of common values and norms, or the development of a rights-based community and identity of the European integration project. The NGOs mainly wanted a European Constitution, as opposed to a mere intergovernmental treaty (for economic cooperation).

The assumption here was that the arguments presented to the second Convention would be similar to those presented to the first one, because also the Charter process was perceived by civil society as a constitution-making process. The contributions to the Laeken Convention that have been analysed support this assumption. However, only a sample of the several hundred contributions to the Laeken Convention were analysed here, thus a full comparison of the arguments presented has not been feasible. The organisations that presented contributions to both Conventions made the same arguments regarding the status of the Constitution and the Charter, the content of these, the process of elaborating such texts etc. The analysis thus points to the conclusion that a majority of civil society organisations contributing to the two Conventions presented a vision of the EU as moving away from the economic focus of the current Union towards a polity which acts as an independent granter of rights to its citizens, with a binding Constitution including a Charter of Fundamental Rights.

The openness, inclusiveness and representativeness of the Conventions stand in stark contrast to the preparatory bodies of previous IGCs. The Conventions consisted of a majority of parliamentarians as citizens' representatives (although not elected for this particular task). Availability of documents was high, access to proceedings was open, and civil society actors had the possibility to engage in the debate on the topics covered by the Charter and the Constitutional Treaty.[45] However, the debate on the future of the Union has not yet amounted to any real European-wide debate among citizens, the majority of which still remain largely unaware of the Convention processes. Even the Secretary General of the Laeken Convention, Sir John Kerr, had no feeling that the Convention's work engaged '*le grand public*', and that most input came from academics and professional lobbyists.[46] If one considers the number of hits on the Laeken Convention's website, for instance, this is strikingly low – '*an average of 47.000 visitors per month*' (CONV 851/03) – amounting at best to 800,000 people during the entire period of the Convention's work, thus about 0.2 per cent of the population of the Union.

There was no right to participation for civil society in the two Convention processes, but there was *a right to be heard*, a right that enabled all arguments of civil society to be brought into the debates in the Conventions. The procedures were largely the same for the two Conventions, and they did not go very far in terms of involving civil society in their work. For this to have been the case, the Conventions could have: avoided the narrow deadlines[47] on application for participation for the hearings; given support to enable more organisations to participate; had procedures for giving feedback on contributions; given increased opportunities for dialogue with the members of the Conventions.

All civil society organisations had the opportunity to – and many of them did – make their arguments known to the Conventions. However, the procedures favoured large European organisations that due to their resources

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[45] While the Conventions' websites closed for new contributions when they concluded their work, the possibility for making contributions public has been carried on at the Futurum website of the Union, at: http://europa.eu.int/futurum/analyse_contrib_en.htm).

[46] Speech to the conference "The Future of the European Union and Norway" in Oslo, 30 October 2003.

[47] One example of such a narrow deadline was the Charter Convention's Press Release SN 1879/00 which was the invitation to civil society to apply for participation at the hearing of 27 April 2000. The press release was made public 29 February 2000, and set the deadline for applications a fortnight later, on 15 March. The application was to be accompanied by a summary of the organisation's views on the Charter, a requirement which clearly must have disqualified many organisations by its haste.

and network of contacts were able to adapt and respond to the complex themes and subjects, the tight schedule and the swiftness of the work of the Conventions. There is thus reason to believe that the parts of civil society which were able to influence the work of the Conventions were organisations whose resources and 'Brussels network' allowed them to follow and contribute to the process as it evolved.

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Annex I

Organisations with contributions to the Convention on the Charter of Fundamental Rights

Action des chrétiens pour l'abolition de la torture – ACAT
Federation Internationale de l'ACAT – FLACAT
Advisory Council on International Affairs (to the Dutch Government and Parliament)
Aktionsgemeinschaft Dienst für den Frieden e.V. – AGDF
Amnesty International
Amnesty International – EU Association
Amnesty International Section Française – AISF
Arbeitsgemeinschaft der öffentlichrechtlichen Rundfunksanstalten der Bundesrepublik Deutschland/ Association of German Public Service Broadcasting – ARD
Arbeitsgemeinschaft Freier Schulen – AGFS
Armutzkonferenz (Österreichisches Netzwerk gegen Armut und Soziale Ausgrenzung)
Association Internationale des Anciens des Communautés Européennes – AIACE
Association of Finnish Local and Regional Authorities
Association of former trainees of the European Communities – ADEK
Association of Women of Southern Europe – AFEM /Association des Femmes de l'Europe Méridionale
l'Association pour le Dévelopement de l'Economie et du Droit de l'Environment – ADEDE
Association pour les professionnels de santé réfugiés – APSR
Bass Hotels & Resorts – Bass PLC (Mr. James Wilson)
Bench House
British Medical Association – BMA
Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (EU-Vertretung) – BAGFW
Bundes Freireligiöser Gemeinden Deutschlands
Bundes für Geistesfreiheit Bayern
(Österreichischen) Bundeskammer für Arbeiter und Angestellte – BAK
Bundesverbandes Deutscher Zeitungsverleger e.V. – BDZV
Carrefour pour une Europe civique et sociale – CAFECS
Centre Européen des Entreprises à Participation Publique et des Entreprises d'Intérêt Économique Général – CEEP
Centro Italiano di Formazione Europea
Cercle Populaire Européen
CFDT (syndicat francais)
CFTC (syndicat francais)
CGC (syndicat francais)
CGT (syndicat francais)
Church of Scientology
Collectif de Pratiques et de Réflexions Féministes 'Ruptures'
Collectif sur la Charte des droits fondamentaux – CCDF
Comité des Organisations Professionelles Agricoles de l'Union Européenne – COPA
Comité européen de coordination de l'habitat social – CECODHAS
Comité médical pour les exilés – COMEDE
Commission Justice et Paix
Commission Parlementaire des Affaires Européennes (Parlement Portugaise)
Secretariat of the Commission of the Bishops' Conferences of the European Community – COMECE
Confederación de Asociaciones de Vecinos Consumidores y Usuarios de España – CAVE
Confédération des Organisations Familiales de l'Union Européenne – COFACE

Confédération Européenne des Syndicats Indépendants – CESI
Confédération Francaise des Travailleurs Chrétiens – syndicat CFTC
Confederation of British Industry – CBI
Confederation of German Employers' Associations – BDA
Conférence des Notariats de l'Union Européenne – CNUE
Conférence des Régions Périphériques maritimes
Conference of European Churches (/Church and Society Commission of…)
Congrés des Pouvoirs Locaux et Régionaux de l'Europe – CPLRE
Conseil Central des Communautés Philosophiques non-confessionelles de Belgique – CCLCVR
Consulta per la Giustizia Europea dei Diritti del'Uomo (presso il Consiglio dell'Ordine degli Avvocati
       di Roma)
Cooperativa Pangea, Italia (Fair Trade Movement: 'the right of being human beings')
Council of European Municipalities and Regions – CCRE
Country Landowner's Association of England and Wales
(Horst Prem, Vizepräsident des) Dachverbandes Freier Weltanschungsgemeinschaften – DFW
Danish Centre for Human Rights
Danish Organisation of organisations of Disabled People – DSI
Danmarks Frie Fagforening – DFF
Deutschen Gewerksschaftsbundes – DGB
Deutschen Länder/ Arbeitsgruppe der Deutschen Länder
Deutschen Mennonitischen Friedenskomitte – DMFK/ Mennonite Peace Committee
Deutschen Paritätischen Wohlfahrtsverbandes Gesamtverband
Deutschen Städte- und Gemeindebundes
Deutschen Unitarier
(Kommission Europa des) Deutschen Juristinnenbundes – DJB
Dutch Standing Committee of experts on international immigration, refugee and criminal law
(UK) Engineering Employer's Federation – EEF
Eurochambres
Eurocities
Eurolink Age
European Anti Poverty Network – EAPN
European Association of Real-estate owners – GEFI
European Blind Union
European Broadcasting Union – EBU
European Bureau for Lesser Used Languages – EBLUL
European Centre of the International Council of Women – ECICW
European Children's Network – Euronet
European citizens and their associations – ECAS
European Confederation of Forest owners – CEPF
European Co-operation in Anthroposophical Curative Education and Social Therapy – ECCE
European Council of Steiner Waldorf Schools
European Council on Environmental Law
European Council on Refugees and Exiles – ECRE
European Forum for Child Welfare – EFCW
European Forum for Freedom in Education – EFFE /Europäischen Forums für Freiheit im
       Bildungswesen
European Forum for the Arts and Heritage – EFAH
European Housing Forum
European Justice and Peace Commissions
European Landowners' Organisation – ELO
European Liaison Committee on Services of General Interest – CELSIG /Comité Européen de Liaison
       sur les Services d'Intérêt Général

European (Union) Migrants' Forum
European Movement
European Newspaper Publishers' Association – ENPA
European Region of the Lesbian and Gay Association – ILGA-Europe
European Round Table of Charitable Social Welfare Associations – ETWelfare
European Study Group
European Trade Union Confederation – ETUC (CES-ETUC)
European Union of Christian Democratic Workers – EUCDW
European Union of House Builders and Developers – UEPC
European Women's Lobby – EWL
Europäischen Union Christlich-Demokratischer Arbeitsnehmer – EUCDA
Evangelischen Akademie Thüringen
Evangelsichen Kirche A.B. in Österreich
(Diakonischen Werks der) Evangelischen Kirche in Deutschland – EKD
Eversheds Business Lawyers in Europe
Fachverbandes für Weltliche Bestattungs- und Trauerkultur
Fédération Européenne des Associations Nationales Travaillant avec les Sans-Abri –
FEANTSA/Federation of National Organisations Working with the Homeless
Fédération européenne des Retraités et Personnes Agées – FERPA
Fédération européenne du Personnel des Services Publics – EUROFEDOP
Fédération Humaniste Européenne
Fédération Internationale des Ligues des Droits de l'Homme –FIDH /International Federation of
        Human Rights
Federation of Catholic Family Associations in Europe /Fédération des Associations Familiales
        Catholiques en Europe
Federation of German Industries – BDI
Federation of Swedish County Councils
Folkebevægelsen for Frie Fagforeninger – 4F (Denmark)
FONDA pour la vie associative
Food First Information and Action Network – FIAN
Force Ouvrière
Forum des Migrants de l'Union européenne
Forum Européen des Orthodoxes
Forum Menschenrechte (German Forum for Human Rights)
Fransiscans (Commission for Justice, Peace and Integration of Creation)
Freigeistigen Lebenshilfswerkes
Gauche Européenne (section belge)
General Council of the Bar of England and Wales
Gesellschaft für Freigeistige Kultur
(Österreichischen) Gewerkschaft Bau-Holz
Groupe accueil et solidarité – GAS
Groupe d'information et de soutien pour les immigrés – GISTI
Groupement Européen des Fédérations intervenant dans l'immobilier – GEFI
Groupement Européen des Sociétés d'Auteurs et Compositeurs – GESAC
Haus und Grund Deutschland – Zentralverband der deutschen Haus-, Wohnungs- und
        Grundeigentümer e.V.
Humanistischen Freidenkerbundes Brandenburg
Icelandic Human Rights Center
IG Medien
IG Eurovision
Initiative 'Netzwerk Dreigliederung'
Initiativkreis für den öffentlichen Rundfunk Köln

Initiativ Liewensufank Asbl/Institut für die Verbesserung der Begingungen rund um die Geburt
l'Institut pour la Démocratie, Paris
Institut Robert Schuman pour l'Europe
International Catholic Migration Commission – ICMC
International Forum Gastein
International Institute for Right of Nationality and Regionality
International Rehabilitation Council for Torture Victims – IRCT
Irish Business Bureau – IBB
Irish Business Employers Confederation – IBEC
Jungen Europäischen Föderalisten – JEF/Young European Federalists
KAIROS Europe
Kolping Society of Europe
Konrad-Adenauer-Stiftung
Law Society of England and Wales
Lega italiana dei Diritti dell'Animale – LIDA
Executive Committee of the Leuenberg Church Fellowship – LCF
Liaison Committee of Non-Governmental Organisations (NGOs) enjoying consultative status
        with the Council of Europe (407 NGOs from 41 countries)
LO (Sweden)
le Bureau de l'association 'Maison de l'Europe du Land Brandebourg'
MAPP
Marangopoulos Foundation for Human Rights
Minority Rights Group International – MRG
Mouvement international ATD Quart Monde
Norwegian Institute of Human Rights
Österreichischen Gewerkschaftbundes
Office catholique d'information et d'initiative pour l'Europe – OCIPE
Pax Christi International
Permanent Forum of Civil Society
Platform of European Social NGOs /Plate-forme des ONG européennes du secteur social
Points Cardinaux
Presence des Communautes D'Origine Africaine/ Representatives of Communities of African Origin
Quaker Council for European Affairs – QCEA
Raoul Wallenberg Institute
Rat der Gemeinden und Regionen Europas – Deutsche Sektion
SACO (Sweden)
Service œcuménique d'entraide – CIMADE
Service social d'aide aux émigrés – SSAE
Sociedad General de Autores y Editores – SGAE
Society for Threatened Peoples International
Stichting Living Together in a New Europe
Sustainable Design International
Swedish Association of Local Authorities
Terre des Hommes France
TCO (Sweden)
Union des Fédéralistes Européens-Belgique
Union of European Federalists – UEF/ Union des Fédéralistes Européens
l'Union Internationale de la Propriété Immobiliere – UIPI
Union of Industrial and Employer's Confederations of Europe – UNICE
Union of Professional Engineers in Finland
Union nationale interfederale des Ouvres et organismes prives sanitaires et sociaux – UNIOPSS
United Nations Committee on Economic, Social and Cultural Rights

United Nations High Commissioner for Refugees
Verbandes freier Weltanshaungsgemeinschaften Hamburg
Verbandes Privater Rundfunk und Telekommunikation e.V. – VPRT
Vereinigung zur Förderung des Petitionsrechts in der Demokratie e.V.
VIDES
Weltföderalisten in Deutschland
Weltbürgerstiftung
Wirtschaftskammer Österreich
World Conference on Religion & Peace – WCRP
World Union of Catholic Women's Organisations – WUCWO
Zweites Deutsches Fernsehen/ German Television – ZDF
Åbo Akademi University Institute for Human Rights

Nikolaus Schultz, Universität der Bundeswehr
Joël Zylberberg (psychoanalyste, expert devant les tribunaux Belges)
Mr. C.J. Walsh – Sustainable Design International
Thomas Clement
Mr. Klaus Lörcher
Karl Hermann Haack, Mitglied des deutschen Bundestags
Gerhard Schmid – MEP
Mme. Juliette Lelieur
Herrn Prof. Martin Stock, Universität Bielefeld, Fakultät für Rechtswissenschaft
D. Isaac Ibañez Garcia
Mr. Dr. Bernhard W. Wegener, Universität Bielefeld, Juristische Fakultät
Herrn Dr- Marten Brauer

Total: 203 organisations and 12 individuals

+ Observers:
2European Commission; 5Committee of the Regions; 2Economic and Social Committee;
European Ombudsman; 4European Parliament (Assembly and DG for Research);
18Council of Europe (Committee of Ministers, Parliamentary Assembly and Observers to the
   Convention)

Annex II
Organisations with contributions to the Forum of the Convention on the Future of Europe

Académie Francophone
Action CatholiqueGenerale Feminine (Acgf)
Action Préventive contre le Martyre des Animaux de Laboratoire asbl – APMA
Active Citizenship – Cittadinanzattiva
Adrien, Citoyens d'Europe
Advisory Council on International Affairs
AEBR (Local/regional authorities)
AER (Local/regional authorities)
All Party Alliance Against Brussels
Alleanza Evangelica Italiana
Almadreams Ltd
Amministrazione Provinciale di Pesaro e Urbino
Animal Christian Concern – ACC
Animal Defenders International
Anti Bullfighting Committee Belgium
Anti-Maastricht Alliance
APRODEV (Church related Development Organisations)
Arbeiterwohlfahrt Bundesverband e. V. – AWO
Arbeitsgemeinschaft Europäischer Grenzregionen – AGEG
Arco Latino / Arc Llatí/ Arc Latin
Asociación para la Cooperación con el Sur ' Las Segovias ' - ACSUR Las Segovias
Asociación para la Defensa del Derecho al Desnudo – ADDAN
ASPAS
Assembly of European Regions – AER/ Assemblée des Régions d'Europe – ARE
Association 3D Dimensions Dialogue Dignité
Association des Citoyens pour la Promotion de la Monnaie européenne – PROMEURO
Association des Etats Généraux des Etudiants d'Europe – AEGEE
Association des Femmes de l'Europe Méridionale – AFEM
Association départementale des Francas de Vendée
Association européenne des élus de montagne – AEM
Association Internationale de la Mutualité – AIM
Association Internationale des Amis de Robert Schuman en Grèce
Association internationale pour la promotion des Femmes d'Europe – AIPFE
Association of Commercial Television – ACT
Association of Irish Regions
Association of Local Authorities in Lithuania – ALAL
Association of London Government European Service
Association pour la Paix Mons-Borinage
Association pour la Promotion de la Francophonie en Flandre
Association pour la taxation des transactions financières et l'aide aux citoyens – ATTAC
Association pour le Pluralisme Linguistique et Culturel en Europe
Associations Familiales & Culturelles
Associazione degli ex Parlamentari della Repubblica Italiana
Associazione delle regioni Europee con potere legislativo
Assolombarda (Confindustria) – Gruppo Giovani Imprenditori
ATTAC de Mons-Borinage

Atelier Brozyna de Recherche fondamentale et appliquée en vytvorologie
Ausschuss für Familie, Senioren, Frauen und Jugend des Deutschen Bundestages
Austrian Federal Economic Chamber
Austrian Federation of Trade Unions
Autisme – Europe
Avosetta-Group
BANU - Union Populaire
Bartholdi – Liberté
Bertelsmann Stiftung
Birdlife International
Bow Group (The)
British Bankers' Association – BBA
British Humanist Association
British Medical Association – BMA
British Overseas NGOs for Development – BOND
Broward Community College
Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege – BAGFW
Bundeskammer für Arbeiter und Angestellte Federal Chamber of Labour
Bundesnotarkammer
Bundessteuerberaterkammer
Bundesverband der Freien Berufe – BFB
Bundesverband deutscher Banken e.V.
Bundesverband Deutscher Privatschulen (VDP)
Bundesverband Deutscher Unternehmensberater - BDU e.V
Bundesverband Informationswirtschaft, Telekommunikation, Neue Mediene e.V. – BITKOM
Bundesverband Öffentlicher Banken Deutschlands, VÖB, e.V.
Bundesvereinigung der Deutschen Arbeitgeberverbände e.V.
Bureau européen pour les Langues Moins Répandues – BELMR
Business Advisors International – BAI Inc.
Bündnis 90/ Die Grünen
Camera Penale Di Roma
Campaign for an Independent Britain
Caritas Europa
CCME
Center for Research on Geopolitics
Centre des Jeunes Dirigeants d'Entreprise
Centre Européen des entreprises à participation publique et des entreprises d`intérêt
        économique général – CEEP
Centre Européen du Conseil International des Femmes – CECIF
Centre for European Policy Studies – CEPS
Centre for European Reform
Centro de Estudios Naturistas de Barcelona
Centro interdipartimentale ricerche sul Diritto delle Comunità europee - Università di Bologna
        – CIRDCE
Centrum für angewandte Politikforschung Ludwig-Maximilians-Universität München
Cercle Condorcet de Bourges et du Cher
Cercle Condorcet de Limoges
Cercle Condorcet Picardie
Chaire Européenne de Recherche et d'Enseignement – CERE
Chrétiens pour les droits de l'homme / Christians for Human Rights
Church of Greece
CIDSE (Catholic Development Organisations)

Circle (The)
Citizens Union Paremvassi
Citizens` Movement for an Open Society
Civil Society Contact Group - Joint group of the 4 large NGO families (social, environmental, developmental and human rights)
Climate Action Network Europe
Club de Venise
Collectif pour la Citoyenneté et les Droits Fondamentaux – CCDF
College of Europe
Collegio Europeo di Parma
Comitato per l'Ulivo di Bruxelles
Comité Anti Stierenvechten vzw
Comité de liaison des organisations non-gouvernementales de développement auprès de l`Union Européenne - CL ONG
Comite des Organisations Professionnelles Agricoles de l'Union Européennes – COPA
Comité européen de liaison sur les services d'intérêt général – CELSIG
Comité Général de la Coopération Agricole de l'Union Européenne – COGECA
Comité International Olympique – CIO
Comité national olympique et sportif français
Comité Pauvreté et Politique
Comité Radicalement Anti Corrida – CRAC
Commission consultative du dialogue sur la construction européenne (CDE)
Commission des îles de la Conférence des régions périphériques maritimes CRPM
Commission of the Bishops' Conferences of the European Community – COMECE
Committee for International Relations, Diocese of Copenhagen (Evangelical-Lutheran)
Compassion in World Farming
Concord - The European Confederation for Relief and Development
Confederacion empresarial Española de la economia social (CEPES)
Confederation of British Industry - The Voice of Business
Confederation of Unions for Academic Professionals in Finland (the) - Akava ry
Conference of European Churches – CEC (Church and Society Commission of …)
Conferenza dei Presidenti dell`Assemblea, dei Consigli regionali e delle Province autonome
Confrontations. Association d'Intellectuels Chrétiens
Confédération fiscale Européenne – CFE
Confédération des organisations familiales de l'Union européenne – COFACE
Confédération Européenne des Coopératives de Production et de Travail Associé, des Coopératives Sociales et des Entreprises Participatives – CECOP
Confédération Générale du Travail – CGT
Conférence des assemblées législatives régionales européennes – CALRE
Conférence des Notariats de l'Union Européenne – CNUE
Conférence des Régions Périphériques Maritimes d'Europe – CRPM
Conférence Européenne Permanente des Coopératives, Mutualités, Associations et Fondations - CEP-CMAF
Conseil des Associations d'Europe – CAE
Conseil Européen des Professions Libérales – CEPLIS
Conseil Régional d'Ile-de-France
Consejo de la Comunidad Valenciana para el Debate sobre el Futuro de Europa
Consejo de la Juventud de España – CJE
Consejo General de la Abogacía Española
Conservative Democratic Alliance
Convention Européenne des Etudiants de Sciences Po
Coordinadora Estatal para la Reforma de la Ley Electoral

Council on Environmental Law

Council of European Municipalities and Regions - CEMR / Conseil des Communes et Régions d'Europe – CCRE

Council of the Bars and Law Societies of the European Union – CCBE

Courrier Sud – Association Francophone des Professionnels de l'Aéronautique

CPMR (Local/regional authorities)

D.I.E.A. (Documental Center of Ingeneering and Environmental Ethics)

Danske Mediers Forum

Democrat Youth Community of Europe

Department for external Church relations of the Moscow Patriarchate, Russian Orthodox Church

Deutsche in der Résistance, in den Streitkräften der Antihitlerkoalition und der Bewegung 'Freies Deutschland' e.V. – DRAFD

Deutsche Vereinigung für Parlamentsfragen – DVParl

Deutscher Caritasverband e.V.

Deutscher Gewerkschaftsbund

Deutscher industrie-und handelskammertag – DIHK

Deutscher Juristinnenbund – DJB

Deutscher Kulturrat e.V.

Deutscher Sparkassen- und Giroverband

Deutscher Sportbund / Nationales Olympisches Komitee für Deutschland

Deutscher Staedtetag, Deutscher Staedte- und Gemeindebund, Deutscher Landkreistag

Deutscher Steuerberaterverband e.V.

Deutscher Verband für Wohnungswesen, Städtebau und Raumordnung e.V.

Deutscher Verein für öffentliche und private Fürsorge e.V.

Diakonisches Werk der EKD – DIAKONIE

Dipartimento di Scienze ReligioseUniversità Cattolica del S. Cuore – Milano

Dipartimento di studi giuridici e sociali. universita' di parma

Direktorenkonferenz der Landesmedienanstalten – DLM

Défense de la Langue Française

Délégation Européenne du Mouvement Mondial des Mères – MMMEurope

ESPACES

ETUC

Eiroforum

Equilibres et Populations

Escuela de Ingenieros de San Sebastián – TECNUN

Esperanto-Weltbund

Etudiants Musulmans de France- EMF

EU Committee of the American Chamber of Commerce in Belgium

EURIMA - European Insulation Manufacturer Association

Euro Citizen Action Service – ECAS

Eurocare-Advocacy for the Prevention of Alcohol related Harm in Europe

Eurochambres the association of European Chambres of Commerce and Industry

Eurocommerce a.i.b.s.

EuroDefense-Portugal

Eurodiaconia

Eurogroup for Animal Welfare

Euromontana

Europa Diversa

Europa-Union Deutschland e. V.

Europabüros der Baden-Württembergischen, Bayerischen und Sächsischen Kommunen

EUROPE 2020

European Academy Bolzano/Bozen – EURAC
European Academy of Sciences and Arts-EASA
European AgriCultural Convention
European Alliance of Companies for Energy Efficiency in Buildings
European Alliance of EU-critical Movements (The) – TEAM
European Anti-Poverty Network – EAPN
European Association For the Defence of Human Rights
European Association of Service Providers for Persons with Disabilities – EASPD
European Banking Federation
European Blind Union
European Broadcasting Union – EBU
European Bureau for Lesser Used Languages – EBLUL
European Children`s Network (the) – Euronet
European Citizen Action Service – ECAS
European Network Against Racism – ENAR
European Citizen's Network, EUROPE NOW !
European Community of Consumer Cooperatives. EURO COOP
European Community Organisation of Socialist Youth – ECOSY
European Confederation of Police
European Confederation of Young Entrepreneurs
European Constitutional Group
European Consumers´Organisation – BEUC
European Council for Steiner Waldorf Education
European Council for Voluntary Organisations – CEDAG
European Council of Artists – ECA
European Council of National Associations of Independent Schools - E.C.N.A.I.S.
European Cultural Foundation
European Disability Forum (The)
European Documentation and Research Centre
European Environmental Advisory Councils – EEAC
European Environmental Bureau
European Evangelical Alliance
European Federation for the Education of Occupational Travellers
European Federation for Transport and Environment
European federation of employee share ownership – EFES
European Federation of National Associations Working with the Homeless – FEANTSA
European Federation of Public Service Unions – EPSU
European Film Companies Alliance, Independent Music Companies Association –IMPALA
European Forum for the Arts and Heritage – EFAH
European Foundation Centre – EFC
European Health Policy Forum
European Heart Network – EHN
European House, Budapest
European Institute of Public Administration – EIPA
European Landowners Organisation
European Law Students Association - Saarbruecken e.V. – ELSA
European League for Economic Cooperation/ Ligue Européenne de Coopération Economique -
    ELEC
European liaison Committee for social housing
European Liberal Youth – LYMEC
European Metalworkers' Federation –EMF
European movement in Estonia

European Movement Ireland
European Network against Racism – Réseau Européen contre le Racisme
European Network Church on the Move
European Network for Smoking Prevention –ENSP
European network of major cities (The) – EUROCITIES
European Non-Governmental Sporta Organisation – ENGSO
European Older People`s Platform – AGE
European Organisation of Military Associations – EUROMIL
European Parents Association
European Peace Building Liaison Office – EPLO
European Policy Centre (The)
European Public Health Alliance
European Public Law Center
European Region of the International Lesbian and Gay Association (The) - ILGA-Europe
European Region of the World Union of Catholic Women's Organisations - WUCWO-
        Europe
European Research Advisory Board – EURAB
European Round Table of Charitable Social Welfare Associations – ETWelfare
European Round Table of Industrialists – ERT
European Social Action Network – ESAN
European Social Insurance Partners
European Solidarity Towards Equal Participation of People – EUROstep
European Studies Center, St Antony's College Oxford University
European Trade Union Confederation Youth Committee
European Vegetarian Union
European Volunteer Centre – CEV
European Women Lawyers Association – EWLA
Europäische Union Christlich Demokratischer Arbeitnehmer – EUCDA
Europäische Vereinigung der Verbände Kleiner und Mittlerer Unternehmen -EV-KMU
Europäischer Kartellverband Christlicher Studentenverbände – EKV
Europäisches Bürgernetzwerkes EUROPA JETZT!
Europäisches Forum für Freiheit im Bildungswesen e.V. – EFFE
Eusko Ikaskuntza-Sociedad de Estudios Vascos (EI-SEV)
Evangelical Lutheran Church of Finland
Evangelische Kirche in Deutschland –EKD
Evropaiki Ekfrasi
Fachausschuss EU Angelegenheiten der Berliner SPD
Facoltà di Scienze Politiche dell'Università Statale di Milano
Famiglie italiane associate Difesa diritti audiolesi – FIADDA
Famille Franciscaine de France (Coordination Justice - Paix - Intégrité de la Création)
Federal Trust for Education and Research
Federal Union of European Nationalities – FUEN
Fédération de la Fonction publique européenne
Federation Euro-Arménienne pour la justice et la démocratie (Comité Européen de la Cause
        Arménienne – CDCA Europe)
Federation nationale des societes d`economie mixte locales francaises – FNSEM
Federazione Italiana Donne Arti Professioni Affari - F.I.D.A.P.A.
Federazione nazionale dei parchi e delle riserve
Fishermen's Association Limited (The)
FONDA / Carrefour pour une Europe civique et sociale-CAFECS
Fondation Charles Léopold Mayer Pour le Progrès de l'Homme – FPH
Fondation Ligue française des droits de l`animal

Fondazione 'montagna e europa' arnaldo colleselli
Fondazione Lelio e Lisli Basso
Fondazione Sublacense Vita e Famiglia
Foreign Policy Centre (The)
Foro generacion del 78
Forum for language rights and cultural diversity
Forum for the future of europe (the)- forum 2004
Forum francophone international-France
Forum Menschenrechte
Forum of European Muslim Youth and Student Organisations
Foyer Catholique Européen
Free Church Council of Finland
Friends of Nature International
Friends of the Earth Europe
Fundacion nahumpro siglo XXI' naturaleza humana y del medio proyectada al siglo XXI '
Fundación Academia Europea de Yuste – FAEY
Fédération Belge des Coopératives – FEBECOOP
Fédération de la Fonction Publique Européenne / Section Conseil
Fédération de Liaisons Anti Corrida –FLAC
Fédération des Employeurs Européens / The Federation of European Employers
Fédération Européenne de l'Education et de la Culture - FEEC, section européenne de la Ligue
       Internationale de l'Education et de la Culture Populaire
Fédération Européenne des Femmes Actives au Foyer – FEFAF
Fédération Européenne des Retraités et des Personnes Agées – FERPA
Fédération Européenne des Réalisateurs de l`Audiovisuel
Fédération Humaniste Européenne - EHF-FHE
Fòrum Català pel Dret a l`Autodeterminació – FOCDA
Fòrum Cívic per una Constitució Europea (Foro Cívico por una Constitución Europea)
Föderation der katholischen Familienverbänden in Europa – FAFCE
Förderverein Bairische Sprache und Dialekte e.V.
GAVEA asbl. Groupe d'Action Végétarien pour l'Egalité Animale
Gay and Lesbian Humanist Association - GALHA
GdW Bundesverband deutscher Wohnungsunternehmen e.V.
Gepolis – Centro de Estudos de Ética Política e Religião
GESAC - Secrétariat Général
Gesellschaft für bedrothe Völker Südtirol – GFBV
Grand Orient de France
Greater London Authority on behalf of London European Forum
Greek Animal Welfare Fund
Greenpeace EU Unit
Greyhounds in Nood Nederland
Group of National Travel Agents' and Tour Operators' Associations within the EU, ECTAA
Groupe des douze
Groupe de Mons des Amis du Monde Diplomatique
Groupement de Réflexion et d'Action AnimalLibération - G.R.A.A.L.
Grup: Història i Fe
Grupo de trabajo para la Convención Europea
GRUPPO DEI 10
Habitat International Coalition
Handwerkskammer Niederbayern·Oberpfalz
Hessen
Hnuti Pro zivot CR

Hotrec – Hotels, Restaurants and Cafés in Europe
Human Rights, Democracy and Conflict Prevention NGO Network
Humanistischer Verband Deutschlands
Hungarian Civil Society Council
IALANA - Italia, associazione italiana dei giuristi contro le armi nucleari
Initiative & Referendum Institute - IRI Europe
Initiative for public utility services – ISUPE
Initiative Netzwerk Dreigliederung
Initiativgesellschaft zur Förderung der europäischen Integration durch neue Ideen und
    demokratische Projekte IG EuroVision e.V.
Initiativkreis Wirtschaft e.V.
Initiativkreis zur Förderung des öffentlich-rechtlichen Rundfunks, Köln
Institut d'Humanisme Méthodologique
Institut d'Estudis d'Economia Política Natural - C.E.E.P.N.
Institut européen de Cluny – ENSAM
Institut für Europäische Politik e.V.
Institut für Höhere Studien - IHS / Institute for Advanced Studies
Institut für Staats- und Verwaltungsrecht Universität Wien – Juridicum
Instituto de Estudos Estratégicos e Internacionais – IEEI
Instituto Mediterráneo de Estudios Europeos, Fundación de la Comunidad Valenciana
Interessengemeinschaft Muttersprache in Österreich, Graz e.V.
International and European Public Services Organisation – IPSO
International Association of Lawyers Against Nuclear Arms (Germany) – IALANA
International Communications Round Table –ICRT
International European Movement – IEM
International Humanist and Ethical Youth Organisation
International Movement ATD Fourth World
International Planned Parenthood Federation, European Network – IPPF EN
Internationale Vereinigung der ehemaligen Angehörigen der Europäischen Gemeinschaften
    (Deutsche Sektion e. V.)
ISTITUTO LUIGI STURZO
Istituto nazionale di Urbanistica
Italia International Peace Bureau – IPB
JADE, European Confederation of Junior Enterprises
Jane Goodall Instituut Belgie
Jesuit Refugee Service Europe – JRS-E
Jeunes Européens (Les) – France
Jumelage Münich, Guildford, Evry
Junge Europaische Federalisten Deutschland e. V. – JEF
JuniBevægelsen Mod Union
Justice
JUSTICE ET PAIX- FRANCE
KARAT COALITION
Katafygion Adespoton Zoon – K.A.Z.
Katholischer Familienverband Österreichs
Katolischer Deutscher Frauenbund e.V. – KDFB
Kleis vzw
Kolpingwerk Europa
Konferenz der Präsidentinnen und Präsidenten der deutschen Landesparlamente
Landeskomitee der Katholiken in Bayern
Leuenberg Church Fellowship (Fellowship of Protestant Churches in Europe)
Lithuanian Free Market Institute

Lobby européen des femmes
Local Government International Bureau
Lord Dowding Fund For Humane Research
Main transpersonale Käer, Lëtzebuerger Gesellschaft fir Transpersonal Psychologie a.s.b.l. –
    MTK-IDEE, EAPN Lëtzebuerg
Maison de l`Europe de Lyon et du Rhône (La)
Maison de l'Europe en Mayenne
Marangopoulos Foundation For Human Rights – Mfhr
Marches européennes-Euromarches
Max-Planck-Institut fuer Auslaendisches und Internationales Privatrecht
Mouvement des entreprises de France – MEDEF
Mouvement Europe et laïcité - Centre d'Action Européenne Démocratique et Laïque –
    C.A.E.D.E.L.
Mouvement Européen - France – MEF
Mouvement Européen de la Ruralité (M.E.R.)
Mouvement Européen Indre et Loire Touraine
Mouvement pour les Etats-Unis d'Europe Gauche européenne
Mouvement pour l'Initiative Citoyenne – MIC
Mouvement POURSUIVRE – groupe de REIMS département de la Marne – FRANCE
Movement for a better Europe
Movimento Antispecista
Movimento Europeo per la Difesa della Vita e della Dignitá Umana – MEVD
Movimento politico per l'unita'
National Anti-Vivisection Society
National Centre for Marine Research
National Consumer Council – NCC
National Forum on Europe, Ireland
National Secular Society
Noi Siamo Chiesa -aderente all'International Movement We Are Church – IMWAC
North-South Institute (The)
Northern Ireland Executive
Nyt Europa / New Europe
Office catholique d`informations et d`initiatives pour l`Europe/ Catholic European Study and
    Information Centre – OCIPE
Oberösterreich Konvent
Observatoire Européen des Phénomènes Racistes et Xénophobes – EUMC
Observatoire international de la langue Française
Oesterreichische Notariatskammer
Organisation internationale pour le developpement de la liberte d'enseignement – OIDEL
Organisation Mondiale Contre la Torture – OMCT Europe
Organisacion Nacional de Ciegos Españoles – ONCE
Osterreichische Bundes-Sportorganisation - BSO
Paideia Foundation
Pan-European Circle 'Coudenhove-Kalergi' - a Citizen's Europe !
Paneuropabewegung Österreich
Paritätische Wohlfahrtsverband (Der) - Gesamtverband e.V
Parlamento de Andalucia
Parlamento Vasco – Eusko Legebiltzarra
Partido Nacionalista Vasco (EAJ-PNV)
Partij voor de Dieren
Pax Christi Wallonie – Bruxelles
Permanent Forum Civil Society

Platform of European Social NGOs
Pluriel
Polish NGO Office in Brussels
Polish Robert Schuman Foundation (The)
Polo Europeo Jean Monnet Università degli Studi di Padova
Pre-election Coalition of Women
PRISMA - Progetto per la Rivalutazione dell'Insegnamento e dello Studio del Mondo Antico
Quaker Council for European Affairs – QCEA
Red Cross EU Office
Regards de femmes
REGIONE DEL VENETO
Respect for Animals
Right Now Press Ltd
Région Paris-Ile de France – UEF France
Réseau Citoyennes d'Europe – RCE/ Red Ciudadanas de Europa – RCE
Réseau de Citoyens européens EUROPE MAINTENANT !
Réseau des chrétiens sociaux européens
Réseau EUROMED – Femmes
S.O.S. Grand Bleu
Scottish Executive EU Office
Shambhala Europe
Siemens-Betriebskrankenkasse/SBK-Pflegekasse, Körperschaften des öffentlichen Rechts
Sinistra europea sezione italiana aderente alla gauche europeenne
Sociaal-Economische Raad
Società laica e plurale
Société des Auteurs et Compositeurs Dramatiques – SACD
Société Protectrice des Animaux
SOLIDAR
Solidarietà - Libertà, Giustizia e Pace
SOS Democracy
Sos Sexisme
Sozialdemokratische Partei Deutschland - SPD - regional organisation Hamburg
Stadt Köln, Amt des Oberbürgermeisters, Europabüro
Standing Committee of European Central Bank Unions
Standing Committee of European Doctors –CPME
Standing Committee of experts on international immigration, refugee andcriminal law –Meijers
    Committee
Stiftung 'LIVING TOGETHER IN A NEW EUROPE'
Stiftung Europaverständigung e.V. – SEV
Stiftung Wissenschaft und Politik
Stop Experimenten op levende Dieren vzw S.E.D.
Studienstiftung des deutschen Volkes,Sommerakademie 2002Arbeitsgruppe
Study Group for European Policies
Study Group on a European Civil Code
Sudtiroler Volkspartei – SVP
Suomen KuntaliittoThe Association of Finnish Local and Regional Authorities
Suppression des Expériences sur l'Animal vivant asbl S.E.A.
Swiss Consulting Group
Syndicat CFDT Postes & Télécoms du Rhône
Torhout Sint-Jozefsinstituut
Trans European Policy Studies Association – TEPSA
Transparency International-Brussels asbl

Turkish Economic and Social Studies Foundation – TESEV
UEFA -Union des associations européennes de football
UK Central Local Partnership Working Group on the Future of Europe (the)
ULA – Deutscher Führungskräfteverband
UNIAPAC – Union internationale chrétienne des dirigeants d'entreprise
Union Belge pour l'Abolition de l'Expérimentation sur l'Animal
Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises – UEAPME
Union Européenne des Fédéralistes - Groupe-Europe
Union Nationale des Groupes d'Action des Personnes qui vivent Seules – UNAGRAPS
Union of Capitals of the European Union
Union of European Federalists - U.E.F
Union of Industrial and Employers` Confederations of Europe – UNICE
Union pour l'Europe Fédérale U.E.F. France
Unione degli Atei e degli Agnostici Razionalisti – UAAR
United Nations University -UNU Comparative Regional Integration Studies –CRIS
Universita' Di Foggia
Universitá di Tor Vergata Roma
Unió Democràtica del Poble Valencià (UDPV)
Vaisnava Communications Institute, Oxford
Verein Deutsche Sprache e. V.
Verein für angewandte Evolutions-und Spieltheorie e.V.
Verein Muttersprache, Wien e. V.
VIVANT
Wales Council of the European Movement
Walter Hallstein Institut für Europäisches Verfassungsrecht der Humboldt-Univsersität zu Berlin
Wicks working group
Wilhelm von Humboldt Gesellschaft e. V.
Women Citizens of Europe Network
WWF European Policy Office
Young European Federalists – JEF
Young People of the Greek Orthodox Church for the Future of the European Union
Youth Forum
Youth Forum Jeunesse – YFJ
Youth of the European People`s Party – YEPP

Total: 529 organisations

+ Observers:
European Ombudsman; Committee of the Regions; Economic and Social Committee; Council
of Europe

Annex III
Organisations with contributions to both Conventions

Advisory Council on International Affairs (to the Dutch Government and Parliament)
Association of Finnish Local and Regional Authorities
Association of Women of Southern Europe – AFEM /Association des Femmes de l'Europe
    Méridionale
British Medical Association – BMA
Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (EU-Vertretung) – BAGFW
(Österreichischen) Bundeskammer für Arbeiter und Angestellte – BAK
Carrefour pour une Europe civique et sociale – CAFECS
Centre Européen des Entreprises à Participation Publique et des Entreprises d'Intérêt Économique
    Général – CEEP
CFDT (syndicat francais)
CGT (syndicat francais)
Comité des Organisations Professionelles Agricoles de l'Union Européenne – COPA
Commission Justice et Paix
Secretariat of the Commission of the Bishops' Conferences of the European Community – COMECE
Confédération des Organisations Familiales de l'Union Européenne – COFACE
Confederation of British Industry – CBI
Conférence des Notariats de l'Union Européenne – CNUE
Conférence des Régions Périphériques maritimes
Conference of European Churches (/Church and Society Commission of…)
Council of European Municipalities and Regions – CCRE
Deutschen Gewerksschaftsbundes – DGB
Deutschen Paritätischen Wohlfahrtsverbandes Gesamtverband
Deutschen Städte- und Gemeindebundes
(Kommission Europa des) Deutschen Juristinnenbundes – DJB
Eurochambres
Eurocities
European Anti Poverty Network – EAPN
European Blind Union
European Broadcasting Union – EBU
European Bureau for Lesser Used Languages – EBLUL
European Children's Network – Euronet
European citizens and their associations/ European Civil Action Service – ECAS
European Council of Steiner Waldorf Schools
European Council on Environmental Law
European Forum for Freedom in Education – EFFE /Europäischen Forums für Freiheit im
    Bildungswesen
European Forum for the Arts and Heritage – EFAH
European Landowners' Organisation – ELO
European Liaison Committee on Services of General Interest – CELSIG /Comité Européen de Liaison
    sur les Services d'Intérêt Général
European Movement
European Region of the Lesbian and Gay Association – ILGA-Europe
European Round Table of Charitable Social Welfare Associations – ETWelfare
European Trade Union Confederation – ETUC (CES-ETUC)
European Women's Lobby – EWL

Europäischen Union Christlich-Demokratischer Arbeitsnehmer – EUCDA
(Diakonischen Werks der) Evangelischen Kirche in Deutschland – EKD
Fédération Européenne des Associations Nationales Travaillant avec les Sans-Abri – FEANTSA
Fédération européenne des Retraités et Personnes Agées – FERPA
Fédération Humaniste Européenne
Federation of Catholic Family Associations in Europe /Fédération des Associations Familiales
     Catholiques en Europe
FONDA pour la vie associative
Forum Menschenrechte (German Forum for Human Rights)
IG Eurovision
Initiative 'Netzwerk Dreigliederung'
Initiativkreis für den öffentlichen Rundfunk Köln
Jungen Europäischen Föderalisten – JEF/ Young European Federalists
(Executive Committee of the) Leuenberg Church Fellowship – LCF
Liaison Committee of Non-Governmental Organisations (NGOs) enjoying consultative status
     with the Council of Europe (407 NGOs from 41 countries)
Marangopoulos Foundation for Human Rights
Mouvement international ATD Quart Monde
Office catholique d'information et d'initiative pour l'Europe – OCIPE
Permanent Forum of Civil Society
Platform of European Social NGOs /Plate-forme des ONG européennes du secteur social
Quaker Council for European Affairs – QCEA
Union of European Federalists – UEF/ Union des Fédéralistes Européens
Union of Industrial and Employer's Confederations of Europe – UNICE

Stichting(Stiftung "Living together in a new Europe'
GESAC

66 organisations

Annex IV
List of contributions from civil society to the Charter
Convention

CONTRIB 1	CHARTE 4101/00	Fédération Internationale des Ligues des Droits de l'Homme – FIDH
CONTRIB 4	CHARTE 4104/00	Permanent Forum of Civil Society
CONTRIB 4(B)	CHARTE 4104/00ADD1	Foro Permanente de la Sociedad Civil
CONTRIB 7	CHARTE 4109/00 27.4	Evidence to Council of Europe, by Bench House
CONTRIB 8	CHARTE 4110/00	European Landowners' Organisation – ELO
CONTRIB 15	CHARTE 4119/00	Synod of the Protestant Church in Germany – EKD
CONTRIB 16	CHARTE 4120/00ADD1	Association of Women of Southern Europe – AFEM
CONTRIB 19	CHARTE 4124/00	European Trade Union Confederation – ETUC
CONTRIB 22	CHARTE 4127/00	European Children's Network – Euronet
CONTRIB 23	CHARTE 4128/00ADD1	Commission of the Bishops' Conferences of the European Community – COMECE
CONTRIB 24	CHARTE 4129/00ADD1	International Federation of Human Rights – FIDH **and other organisations**
CONTRIB 25	CHARTE 4130/00	Fédération européenne des Retraités et Personnes Agées – FERPA
CONTRIB 27	CHARTE 4132/00	European Women's Lobby
CONTRIB 33	CHARTE 4143/00	European Bureau for Lesser Used Languages – EBLUL
CONTRIB 34	CHARTE 4144/00	Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (EU-Vertretung) – BAGFW
CONTRIB 41	CHARTE 4155/00	Joël Zylberberg
CONTRIB 42	CHARTE 4157/00	Association of Women of Southern Europe – AFEM
CONTRIB 43	CHARTE 4159/00	Konrad-Adenauer-Stiftung
CONTRIB 45	CHARTE 4161/00	Conseil Central des Communautés Philosophiques non-confessionelles de Belgique – CCL-CVR
CONTRIB 46	CHARTE 4162/00	Federation of Catholic Family Associations in Europe
CONTRIB 48	CHARTE 4164/00	Initiative 'Netzwerk Dreigliederung'
CONTRIB 49	CHARTE 4165/1/00REV1	European Landowners' Organisation – ELO
CONTRIB 50	CHARTE 4166/00	European Bureau for Lesser Used Languages – EBLUL
CONTRIB 51	CHARTE 4167/00	European Round Table of Charitable Social Welfare Associations – ETWelfare
CONTRIB 52	CHARTE 4168/00	Groupement Européen des Fédérations Intervenant dans l'immobilier – GEFI
CONTRIB 53	CHARTE 4169/00	European Children's Network – Euronet
CONTRIB 54	CHARTE 4171/00	European Liaison Committee on Services of

			General Interest –CELSIG
CONTRIB **55**	CHARTE 4172/00		Association des Femmes de l'Europe Méridionale – AFEM
CONTRIB **56**	CHARTE 4173/00		Amnesty International – AI
CONTRIB **57**	CHARTE 4174/00		Fédération Européenne des Associations Nationales Travaillant avec les Sans-Abri – FEANTSA
CONTRIB **58**	CHARTE 4175/00		Haus und Grund Deutschland
CONTRIB **73**	CHARTE 4190/00		European Association of Real-estate Owners - GEFI, the European Confederation of Forest owners – CEPF and the European Landowners' Organisation – ELO
CONTRIB **75**	CHARTE 4194/1/00REV1		Platform of European Social NGOs and the European Trade Union Confederation – ETUC
CONTRIB **78**	CHARTE 4197/00		International Forum Gastein
CONTRIB **79**	CHARTE 4198/00		European Justice and Peace Commissions, International Federation of Leagues for Human Rights - FIDH, European Migrant's Forum, International Catholic Migration Commission - ICMC, KAIROS Europe, Pax Cristi International, Representatives of Communities of African Origin, and Quaker Council for European Affairs – QCEA
CONTRIB **89**	CHARTE 4213/00		Conf. Européenne des Syndicats Indépendants – CESI
CONTRIB **91**	CHARTE 4215/00	27.4	European Forum for Freedom in Education – EFFE
CONTRIB **92**	CHARTE 4216/00		Thomas Clement
CONTRIB **93**	CHARTE 4217/00		D. Isaac Ibañez Garcia
CONTRIB **98**	CHARTE 4223/00		European Co-operation in Anthroposophical Curative Education and Social Therapy – ECCE
CONTRIB **99**	CHARTE 4224/00		Forum Menschenrechte
CONTRIB **101**	CHARTE 4226/00		Confederation of British Industry - CBI
CONTRIB **102**	CHARTE 4228/00	27.4	Initiative 'Netzwerk Dreigliederung'
CONTRIB **103**	CHARTE 4229/00	27.4	Association of German Public Service Broadcasting Corporations – ARD, and German Television - ZDF
CONTRIB **104**	CHARTE 4230/00	27.4	Evangelischen Kirche in Deutschland
CONTRIB **105**	CHARTE 4231/00	27.4	Association of Women of Southern Europe – AFEM
CONTRIB **106**	CHARTE 4232/00A1	27.4	International Federation of Human Rights – FIDH
CONTRIB **107**	CHARTE 4233/00	27.4	Conference of European Churches
CONTRIB **108**	CHARTE 4234/00		General Council of the Bar of England and Wales
CONTRIB **109**	CHARTE 4236/00	27.4	Union of Industrial and Employers' Confederations of Europe – UNICE
CONTRIB **110**	CHARTE 4237/00	27.4	European Bureau for Lesser Used Languages – EBLUL
CONTRIB **112**	CHARTE 4239/00	27.4	European Union of Christian Democratic

			Workers – EUCDW
CONTRIB 113	CHARTE 4240/00	27.4	European Children's Network – EURONET
CONTRIB 114	CHARTE 4241/00	27.4	CAFECS
CONTRIB 115	CHARTE 4242/00	27.4	European Housing Forum - EHF
CONTRIB 116	CHARTE 4243/00	27.4	Collectif pour la Charte des droits fondamentaux – CCDF
CONTRIB 117	CHARTE 4244/00	27.4	Conseil Central des Communautés Philosophiques non-Confessionelles - CCL
CONTRIB 118	CHARTE 4245/00	27.4	Terre Des Hommes France
CONTRIB 119	CHARTE 4246/00	27.4	European Region of the Lesbian and Gay Association – ILGA-Europe
CONTRIB 120	CHARTE 4247/00	27.4	European Women's Lobby
CONTRIB 122	CHARTE 4249/00		Evangelischen Akademie Thüringen
CONTRIB 123	CHARTE 4250/00	27.4	European Blind Union
CONTRIB 125	CHARTE 4252/00	27.4	World Conference on Religion & Peace – WCRP
CONTRIB 126	CHARTE 4253/00	27.4	Europeische Forums für Freiheit im Bildungswesen – EFFE
CONTRIB 127	CHARTE 4254/00	27.4	Evangelischen Kirche in Deutschland
CONTRIB 128	CHARTE 4255/00	27.4	Europäischen Union Christlich – Demokratischer Arbeitsnehmer - EUCDA
CONTRIB 129	CHARTE 4256/00	27.4	Plate-forme des ONG européennes du secteur social
CONTRIB 130	CHARTE 4257/00		Eversheds Business Lawyers in Europe
CONTRIB 131	CHARTE 4258/00	27.4	Union of European Federalists – UEF
CONTRIB 132	CHARTE 4259/00	27.4	European Newspaper Publishers' Association – ENPA
CONTRIB 133	CHARTE 4260/00	27.4	Fédération Humaniste Européenne
CONTRIB 135	CHARTE 4262/00	27.4	Young European Federalists - JEF
CONTRIB 136	CHARTE 4263/00	27.4	Fédération des Assoc. Familiales Catholiques en Europe
CONTRIB 137	CHARTE 4264/00	27.4	Conférence du Régions Périphériques Maritimes d'Europe – CRPM
CONTRIB 138	CHARTE 4265/00		Mr. Klaus Lörcher
CONTRIB 139	CHARTE 4266/00	27.4	Society for Threatened Peoples International
CONTRIB 141	CHARTE 4268/00	27.4	Mouvement international ATD Quart Monde
CONTRIB 146	CHARTE 4273/00	27.4	Irish Business Bureau – IBB, and Employers Confederation – IBEC
CONTRIB 147	CHARTE 4274/00	27.4	Fédération des Associations Familiales Catholiques en Europe (ref. CONTRIB 136)
CONTRIB 150	CHARTE 4277/00		Centre Européen des Entreprises à Participation Publique et des Entreprises d'Intérêt Économique Général – CEEP
CONTRIB 151	CHARTE 4278/00	27.4	Fransiscans
CONTRIB 152	CHARTE 4279/00		Marangopoulus Foundation for Human Rights
CONTRIB 155	CHARTE 4282/00	27.4	General Council of the Bar of England and Wales
CONTRIB 156	CHARTE 4283/00	27.4	Food First Information and Action Network

			– FIAN
CONTRIB 158	CHARTE 4286/00	27.4	Platform of European Social NGOs (21 org.) and the European Trade Union Confederation – ETUC
CONTRIB 159	CHARTE 4287/00	27.4	Comité européen de coordination de l'habitat social – CECODHAS
CONTRIB 160	CHARTE 4288/00		Jungen Europäischen Föderalisten – JEF
CONTRIB 161	CHARTE 4289/00		Deutschen Juristinnenbundes –DJB
CONTRIB 162	CHARTE 4290/00	27.4	Amnesty International
CONTRIB 163	CHARTE 4291/00	27.4	European Landowner's Organisation - ELO
CONTRIB 164	CHARTE 4292/00	27.4	Federation of National Organisations Working with the Homeless – FEANTSA
CONTRIB 165	CHARTE 4293/00	27.4	Eurolink Age
CONTRIB 166	CHARTE 4294/00	27.4	European Citizen Action Service –ECAS
CONTRIB 168	CHARTE 4296/00	27.4	European Council of Steiner Waldorf Schools
CONTRIB 170	CHARTE 4298/00		Confederation of British Industry - CBI
CONTRIB 172	CHARTE 4300/00	27.4	Evangelischen Kirche in Deutschland – EKD
CONTRIB 173	CHARTE 4301/00		International Institute for Right of Nationality and Regionality
CONTRIB 174	CHARTE 4302/00		European Women's Lobby – EWL
CONTRIB 178	CHARTE 4311/00		Kolping Society of Europe
CONTRIB 179	CHARTE 4312/00		Vereinigung zur Förderung des Petitionsrechts in der Demokratie e.V.
CONTRIB 181	CHARTE 4314/00	27.4	Association of Women of Southern Europe – AFEM
CONTRIB 183	CHARTE 4317/00		Engineering Employer's Federation - EEF
CONTRIB 185	CHARTE 4319/00		Danish Organisation of organisations of Disabled People - DSI
CONTRIB 186	CHARTE 4320/00		COFACE
CONTRIB 187	CHARTE 4321/00		European Broadcasting Union – EBU
CONTRIB 189	CHARTE 4323/00		Conference of European Churches
CONTRIB 190	CHARTE 4324/00		Several NGOs from varioues countries **(33 organisations)**
CONTRIB 191	CHARTE 4325/00		syndicats francais: CGC, CFTC, CFDT et CGT
CONTRIB 191(B)			
	CHARTE 4325/00COR1		syndicats francais
CONTRIB 192	CHARTE 4326/00		Aktionsgemeinschaft Dienst für den Frieden – AGDF
CONTRIB 193	CHARTE 4327/00		syndicats francais: CGC, CFTC, CFDT et CGT
CONTRIB 194	CHARTE 4328/00	27.4	Mr. James Wilson, Bass Hotels & Resorts (Bass PLC)
CONTRIB 195	CHARTE 4329/00		European Council on Refugees and Exiles – ECRE
CONTRIB 197	CHARTE 4331/00		Amnesty International – EU Association
CONTRIB 198	CHARTE 4334/00		European Forum for the Arts and Heritage – EFAH
CONTRIB 199	CHARTE 4335/00		Force Ouvrière
CONTRIB 200	CHARTE 4336/00		Confederación de Asociaciones de Vecinos Consumidores y Usuarios de España - CAVE

CONTRIB **201**	CHARTE 4337/00		plusieurs associations de la Coordination francaise pour le droit d'asile: ACAT, APSR, CIMADE, COMEDE, GAS, GISTI, SSAE, AISF
CONTRIB **202**	CHARTE 4338/00		Confédération Francaise des Travailleurs Chrétiens – syndicat CFTC
CONTRIB **204**	CHARTE 4340/00	27.4	International Rehabilitation Council for Torture Victims – IRCT
CONTRIB **205**	CHARTE 4341/00		Conférence des Notariats de l'Union Européenne – CNUE
CONTRIB **206**	CHARTE 4342/00		Martin Stock, Universität Bielefeld, Rechtswissenschaft
CONTRIB **207**	CHARTE 4343/00		European Children's Network - Euronet
CONTRIB **209**	CHARTE 4345/00		Deutschen Paritätischen Wohlfahrtsverbandes Gesamtverband
CONTRIB **210**	CHARTE 4346/00		Bundesverbandes Deutscher Zeitungsverleger e.V.
CONTRIB **211**	CHARTE 4347/00		Verbandes Privater Rundfunk und Telekommunikation e.V. - VPRT
CONTRIB **212**	CHARTE 4348/00		Working group on EU-citizenship, fundamental rights and cultural diversity of the UEF-EU
CONTRIB **213**	CHARTE 4349/00	27.4	Forum des Migrants de l'Union européenne
CONTRIB **214**	CHARTE 4350/00		Engineering Employer's Federation - EEF
CONTRIB **215**	CHARTE 4351/00		Karl Hermann Haack (deutschen Bundestags)
CONTRIB **218**	CHARTE 4354/00		Fédération Internationale de l'ACAT – Action Chrétienne pour l'Abolition de la Torture – FLACAT
CONTRIB **219**	CHARTE 4355/00		LO, TCO, SACO in Sweden
CONTRIB **220**	CHARTE 4356/00		Sociedad General de Autores y Editores – SGAE
CONTRIB **221**	CHARTE 4357/00		Intern.FoodFirst Information and Action Network – FIAN
CONTRIB **224**	CHARTE 4361/00		Cooperativa Pangea, Italia (Fair Trade Movement: 'the right of being human beings')
CONTRIB **225**	CHARTE 4362/00		l'Institut pour la Démocratie, Paris
CONTRIB **226**	CHARTE 4363/00		Deutschen Gewerksschaftsbundes
CONTRIB **227**	CHARTE 4364/00		European Centre of the Intern.Council of Women – ECICW
CONTRIB **228**	CHARTE 4365/00		Church of Scientology
CONTRIB **229**	CHARTE 4366/00	27.4	Eurochambres
CONTRIB **231**	CHARTE 4368/00		Bernhard W. Wegener, Universität Bielefeld (Juristische Fakultät)
CONTRIB **232**	CHARTE 4369/00	27.4	CAFECS
CONTRIB **238**	CHARTE 4378/00		Deutschen Mennonitischen Friedenskomitte - DMFK/ Mennonite Peace Committee
CONTRIB **239**	CHARTE 4379/00		Deutscher Gewerkschaftsbund -DGB
CONTRIB **240**	CHARTE 4380/00		Law Society of England and Wales
CONTRIB **241**	CHARTE 4381/00		Danish Centre for Human Rights **(and 4 other Nordic human rights institutes)**

CONTRIB **242**	CHARTE 4382/00	Initiativ Liewensufank Asbl
CONTRIB **243**	CHARTE 4384/00	le Bureau de l'association 'Maison de l'Europe du Land Brandenburg'
CONTRIB **245**	CHARTE 4386/00	Initiativkreis für den öffentlichen Rundfunk Köln
CONTRIB **246**	CHARTE 4387/00	Platform of European Social NGOs
CONTRIB **247**	CHARTE 4388/00	Mr. C.J. Walsh – Sustainable Design International
CONTRIB **250**	CHARTE 4391/00	Consulta per la Giustizia Europea dei Diritti del'Uomo (presso il Consiglio dell'Ordine degli Avvocati di Roma)
CONTRIB **253**	CHARTE 4394/00	Gerhard Schmid, MEP
CONTRIB **257**	CHARTE 4398/00	Leuenberg Church Fellowship - LCF
CONTRIB **260**	CHARTE 4403/00	European Study Group
CONTRIB **261**	CHARTE 4404/00	Groupement Européen des Sociétés d'Auteurs et Compositeurs - GESAC
CONTRIB **264**	CHARTE 4407/00	Armutzkonferenz (Österreichisches Netzwerk)
CONTRIB **266**	CHARTE 4409/00	Sociedad General de Autores y Editores – SGAE
CONTRIB **267**	CHARTE 4410/00	Liaison Committee of Non-Governmental Organisations
CONTRIB **271**	CHARTE 4415/00	IG Medien
CONTRIB **272**	CHARTE 4416/00	Comité des Organisations Professionelles Agricoles de l'Union Européenne - COPA
CONTRIB **275**	CHARTE 4419/00	D. Isaac Ibañez Garcia
CONTRIB **278**	CHARTE 4424/00	ATD Quart Monde; Conf. des Organisations Familiales de l'Union Européenne – COFACE; European Forum for Child Welfare – EFCW; Union nat. Interfederale des Ouvres et organismes prives sanitaires et sociaux – UNIOPSS
CONTRIB **279**	CHARTE 4425/00	Foundation Marangopoulos
CONTRIB **280**	CHARTE 4426/00	Mme. Juliette Lelieur
CONTRIB **285**	CHARTE 4431/00	European Women's Lobby - EWL
CONTRIB **286**	CHARTE 4432/00	Arbeitsgemeinschaft Freier Schulen – AGFS
CONTRIB **287**	CHARTE 4433/00	Arbeitsgemeinschaft der öffentlichrechtlichen Rundfunkanstalten der Bundesrepublik Deutschland – ARD; Bundesverbandes Deutscher Zeitungsverleger e.V.– BDZV; Zweites Deutsches Fernsehen – ZDF
CONTRIB **288**	CHARTE 4434/00	Platform of European Social NGOs
CONTRIB **289**	CHARTE 4435/00	Jungen Europäischen Föderalisten – JEF
CONTRIB **290**	CHARTE 4436/00	International Federation of Human Rights – FIDH
CONTRIB **291**	CHARTE 4437/00	European Newspaper Publishers' Association – ENPA
CONTRIB **292**	CHARTE 4438/00	l'Union International de la Propriété Immobiliere – UIPI
CONTRIB **293**	CHARTE 4439/00	European Women's Lobby – EWL
CONTRIB **294**	CHARTE 4440/00	Deutschen Juristinnenbundes – DJB
CONTRIB **295**	CHARTE 4441/00	(Österreichischen) Gewerkschaft Bau-Holz

CONTRIB 296	CHARTE 4442/00	European Children's Network (Euronet)
CONTRIB 298	CHARTE 4444/00	l'Association pour le Dévelopement de l'Economie et du Droit de l'Environment – ADEDE
CONTRIB 300	CHARTE 4446/00	Amnesty International
CONTRIB 301	CHARTE 4447/00	Danmarks Frie Fagforening og Folkebevægelsen for Frie Fagforeninger
CONTRIB 302	CHARTE 4448/00	UK Engineering Employer's Federation
CONTRIB 303	CHARTE 4449/00	European Centre of the Int. Council of Women – ECICW
CONTRIB 304	CHARTE 4450/00	European Landowner's Organisation -ELO
CONTRIB 307	CHARTE 4453/00	Union of Professional Engineers in Finland
CONTRIB 309	CHARTE 4455/00	IG Eurovision
CONTRIB 310	CHARTE 4456/00	Deutschen Paritätischen Wohlfahrtsverbandes Gesamtverband
CONTRIB 311	CHARTE 4457/00	Österreichischen Gewerkschaftbundes
CONTRIB 312	CHARTE 4458/00	Permanent Forum of Civil Society
CONTRIB 313	CHARTE 4459/00	Stichting Living Together in a New Europe
CONTRIB 314	CHARTE 4460/00	European Trade Union Confederation – ETUC, and the Platform of European Social NGOs
CONTRIB 315	CHARTE 4460/00ADD1	Confédération européenne des Syndicats et de la Plate-forme des ONGs (**French version of CONTRIB 314**)
CONTRIB 315(B)		
	CHARTE 4461/00	European Women's Lobby - EWL
CONTRIB 316	CHARTE 4462/00	Österreichischen Bundeskammer für Arbeiter und Angestellte – BAK
CONTRIB 317	CHARTE 4463/00	Deutschen Gewerkschaftsbundes – DGB
CONTRIB 318	CHARTE 4464/00	Country Landowner's Association of England and Wales
CONTRIB 320	CHARTE 4466/00	Dachverbandes Freier Weltanschungsgemeinschaften (**and 10 other German NGOs**)
CONTRIB 321	CHARTE 4467/00	Lega italiana dei Diritti dell'Animale – LIDA
CONTRIB 322	CHARTE 4468/00	World Union of Catholic Women's Org.s – WUCWO
CONTRIB 324	CHARTE 4472/00	Association of Women of Southern Europe – AFEM
CONTRIB 325	CHARTE 4474/00	European Round Table of Charitable Social Welfare Associations – ETWelfare
CONTRIB 327	CHARTE 4476/00	Wirtschaftskammer Österreich
CONTRIB 329	CHARTE 4478/00	Minority Rights Group International – MRG
CONTRIB 331	CHARTE 4480/00	Young European Federalists – JEF
CONTRIB 335	CHARTE 4484/00	Nikolaus Schultz, Universität der Bundeswehr
CONTRIB 336	CHARTE 4485/00	European Union of House Builders and Developers – UEPC
CONTRIB 337	CHARTE 4486/00	Association of Women of Southern Europe –
CONTRIB 339	CHARTE 4489/00	Federation of German Industries – BDI, and the Confederation of German Employers'

		Associations – BDA
CONTRIB **340**	CHARTE 4490/00	Conference of European Churches
CONTRIB **341**	CHARTE 4491/00	Evangelsichen Kirche A.B. in Österreich
CONTRIB **342**	CHARTE 4492/00	Plate-forme des ONG européennes du secteur social
CONTRIB **343**	CHARTE 4493/00	Carrefour pour une Europe civique et sociale – CAFECS
CONTRIB **344**	CHARTE 4494/00	Herrn Dr. Marten Brauer
CONTRIB **345**	CHARTE 4495/00	Quaker Council for European Affairs
CONTRIB **346**	CHARTE 4496/00	NGOs enjoying consultative status with the Council of Europe (407 NGOs from 41 countries)
CONTRIB **347**	CHARTE 4497/00	British Medical Association (BMA)
CONTRIB **348**	CHARTE 4498/00	Carrefour pour une Europe civique et sociale – CAFECS
CONTRIB **354**	CHARTE 4954/00	European Council on Environmental Law
CONTRIB_**UEF**	27.4	Union of European Federalists – UEF
CONTRIB _**CES-ETUC**		Platform of European Social NGOs

27.4 = contributions to the hearing held by the Convention on 27 April 2000

Chapter 7

Conceptualising (and Tentatively Mapping) the EU's Social Constituency

John Erik Fossum and Marit Eldholm
ARENA, University of Oslo

> 'Recognition' has become a keyword of our time. A venerable category of Hegelian philosophy, recently resuscitated by political theorists, this notion is proving central to efforts to conceptualize today's struggles over identity and difference… Hegel's old figure of 'the struggle for recognition' finds new purchase as rapidly globalizing capitalism accelerates transcultural contacts, fracturing interpretative schemata, pluralizing value horizons, and politicizing identities and differences… recognition's salience is now indisputable…
>
> (Fraser and Honneth 2003: 1)

Introduction[1]

The purpose of this article is to heighten our understanding of the nature of the EU's social constituency. With *social constituency* is meant the structure of demands and expectations that citizens and groups place on the EU. The EU is widely held to be a functional-type organisation. If this is a correct assessment, it would mean that its social constituency would be made up of

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utility-oriented, economic interest organisations and be much narrower than that of a state.[2]

Is such a conception of the EU consistent with citizens' demands and social movement involvement in, and engagement with, the EU? Is it consistent with the EU's self-conception, and how it defines its social constituency? Many studies note that the social contingent that approaches the EU exceeds well beyond the realm of functional interest organisations (Greenwood and Aspinwall 1998; Greenwood 2003). The EU also presents itself as a polity with a far more committing relationship to its social contingent, through its embrace of democratic norms and its instituting of a European citizenship.

But although the EU is approached by a broad range of actors, this does not in itself prove that it is more than a functional organisation. Actors may still approach it for material gains or in a narrow, instrumental sense. Or they may approach it, so as to curtail it and prevent it from touching on issues of fundamental importance to them. Further, that the EU seeks to portray itself as different from a functional type organisation does not necessarily mean that it really is so. In other words, for it to be meaningful to talk of an EU social constituency that is something more and different from that of a functional organisation we *also* need to look at the nature of concerns that the actors bring to the EU. Are these so salient as to revolve around the actors' identities, their senses of self, and their conceptions of right and wrong? If we relate this to the above quotation from Fraser and Honneth, the issue is whether actors conceive of the EU as a relevant site for *recognition* of identity and for rectification of injustice.

The politics of recognition has entered centre political stage, not only nationally, but also, and increasingly so, *transnationally* (Fraser and Honneth 2003; Fraser 2003; Hobson 2003). Given such a development, those that hold that the EU is a mere functional type organisation, with a narrow social contingent of economic interest organisations, also claim that the EU and its social constituency are *exceptional*, in that they both have escaped entanglement with recognition politics. Those that claim that the EU is legitimate similarly imply that it is made up of a range of national recognition-oriented structures of demands and expectations and that these have not been transnationalised and (re)directed at the EU.

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[2] Many analysts argue that the EU is democratically legitimate because it derives its democratic legitimacy from the Member States. Some concede that the EU addresses a wide range of issues, but they argue that the types of issues it handles lack the salience to spark deep social involvement and public participation (see for instance Moravcsik 2004).

If however the EU makes up an important site for recognition politics, the question remains as to *how* − given its special non-state character − the struggle for recognition would unfold within the EU. What kind of a social constituency would emerge within an EU engulfed in recognition struggles? Would it be made up foremost of the new social movements?[3] Would the concerns be mainly those of *cultural* recognition (cf. Taylor 1994; Fraser 2003)? Would the focus be on *post-material* values (cf. Inglehart 1997, 1990)? Would instead *states* figure as the central actors so that the dominant demands would be those of recognition of *national difference and uniqueness?* These questions bring up the larger conceptual issue of what is meant by recognition. They also bring up the empirical issue of who the relevant actors are, what their claims are, and how the EU relates to these. And not the least, they bring up the methodological issue of *how* to properly map the EU's social constituency.

This article seeks to develop a conceptual-methodological framework that will help us to identify the EU's social constituency and spell out its specific traits. To this end, we seek to fuse elements of a modified version of Axel Honneth's (1995a, b, 2003) approach to recognition (*the what*) with the contentious politics approach (*the how*) associated with Charles Tilly (1978) and associates (see for instance McAdam et al. 2001). The latter apply this to the EU but not from a recognition perspective (Imig and Tarrow 2001).

Recognition, notes Honneth, 'is of central importance today … because it has proven to be the appropriate tool for categorically unlocking social experiences of injustice as a whole' (2003: 249). A core feature here is the notion of a *recognition order*: 'a framework within which individuals and groups are learning to see themselves as recognised with respect to certain characteristics.' Honneth's project is to establish the characteristic features of the modern recognition order.

This framework (appropriately modified and extended) can serve as a useful heuristic tool for the conceptualisation of the EU's social constituency.[4] First, it underlines that any polity generates recognition expectations. The notion of recognition has not only a social, but also a critical legal-institutional

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[3] New social movements are generally identified with the women's movement, sexual liberation, ecologists, the peace movement, and ethnic and linguistic minorities.

[4] We do not consider the normative problems in Honneth's framework. For these consider Fraser's numerous objections to Honneth's approach. See Fraser (1997, 2003); Fraser and Honneth (2003).

component. A person's or group's experience of injustice and disrespect relates to a set of institutionalised principles of recognition.

Second, the framework is useful not only to determine whether the EU establishes such expectations, but also what types they are, and whether the EU can be construed as a novel or unique recognition order.

Third, the framework can accommodate the alleged uniqueness of the EU also because of its inclusiveness: it provides us with a set of analytical categories whose purpose it is to encompass the entire range of motivations that could prompt people to act to rectify injustice. As such it can also capture the *enlarged EU's social constituency*. If we had developed a framework that focused on new social movements only, we would most likely have inserted an unwarranted bias in favour of Western Europe.

In the following section, we spell out the recognition framework in further detail and assess its relevance to the EU. Then, we present a framework that helps us to map and assess the structure of claims-making in the EU and undertake a first attempt to apply this framework to minorities in Europe. These three sections demonstrate that it takes a very major research effort to establish with precision the structure of demands and expectations that are directed at the EU. A recognition-theoretical perspective underlines that such a mapping should also be seen in light of the type of recognition expectations that the EU establishes. In the subsequent section, such a brief sketch is provided. It is placed after the mapping so as to make clear that there might be discrepancies between the social demands that are oriented at the EU on the one hand and the nature of the recognition expectations that the EU seeks to establish on the other. An assessment of the EU's social constituency requires proper attention *both* to the recognition expectations that the EU establishes *and* to the structure of social demands that is oriented at it. The latter is clearly informed by the former but cannot be derived from it. The final section holds the conclusion.

The recognition framework: presentation and assessment

The term recognition has roots in Hegelian philosophy, in Hegel's phenomenology of consciousness and

> designates an ideal reciprocal relation between subjects in which each
> sees the other as equal and also as separate from it. This relation is

> deemed constitutive for subjectivity; one becomes an individual subject only in virtue of recognizing, and being recognized by, another subject.
>
> (Fraser 2003: 10)

Recognition is therefore critical to identity. It speaks to how identities are constructed, sustained, and how they may be, violated. Recognition is about the moral sources of social discontent. What subjects expect from society above all is recognition of their identity claims, in other words,

> subjects perceive institutional procedures as social injustice when they see aspects of their personality being disrespected which they believe have a right to recognition. What is called 'injustice' in theoretical language is experienced by those affected as social injury to well-founded claims to recognition.
>
> (Honneth 2003: 114)

Recognition speaks to matters moral because of people's expectations: 'every society requires justification from the perspective of its members to the extent that it has to fulfill a number of normative criteria that arise from deep-seated claims in the context of social interaction' (Honneth 2003: 129). Recognition is a social phenomenon because individuals (and groups) direct their expectations and concerns at society.

To claim that people have a strong need for recognition is akin to saying that human beings are something more, and different from, a mere collection of atomistic actors who pursue their self-interests. Claims and issues revolve around conceptions of the good life, and what is just and valuable; and they are therefore very difficult to reconcile. They can spark extremely intense and upsetting conflicts, and can as easily break as make a fledgling entity (such as the EU). Struggles for recognition can bring with them demands for attitudinal changes, for changes in institutions and socialisation patterns, and for changes in socio-cultural valuations.

Honneth's notion of the modern recognition order consists of three sets of principles. The first principle relates to 'self-confidence', and is based on needs and emotions generally found in love, the notion of 'being oneself in another'. This notion of recognition as self-confidence highlights trust, as it is based on love. It refers to the individual's basic trust in itself and others – a taken-for-granted trust in one's own control of one's body. This is deeply harmed when the individual is deprived of basic control of his/her body,

through abuse, rape, and torture.[5] A person who is unable freely to control his or her body will suffer a lasting loss in basic self-confidence, because of reduced trust in own ability to control own body, and that others will respect his/her physical integrity. Violation deeply affects the victims' emotive state, as it also produces a deep sense of humiliation and social shame.

The second recognition principle is termed 'self-respect'. It refers to the moral responsibility that derives from legal rights. Legal rights also have a clear recognition aspect because:

> we can only come to understand ourselves as the bearers of rights when we know, in turn, what various normative obligations we must keep vis-à-vis others: only once we have taken the perspective of the 'generalized other', which teaches us to recognize the other members of the community as the bearers of rights, can we also understand ourselves to be legal persons, in the sense that we can be sure that certain of our claims will be met.
>
> (Honneth 1995a: 108)

Legal relations highlight the general and universalisable aspect of the recognition relationship because what is recognised is the person as a holder of rights, not the particular personality traits or attributes of the person. Rights provide their bearers with the reassurance of a standardised form of entitlement and provide rights bearers with the opportunity 'to exercise the universal capacities constitutive of personhood' (Anderson in Honneth 1995a: xv). They also offer a measure of protection against negative social evaluations. Legal recognition does not refer to a given set of human abilities which are fixed once and for all:

> It will rather turn out to be the case that the essential indeterminacy as to what constitutes the status of a responsible person leads to a structural openness on the part of modern law to a gradual increase in inclusivity and precision.
>
> (Honneth 1995a: 110)

Failure of recognition occurs when people are excluded from possession of rights, or when they are denied certain rights. Such denial affects a person's moral self-respect. This of course refers to the sense of loss of whatever entitlements were associated with the rights. But since rights are also

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[5] See Young (1990) for an excellent account of such different forms.

expressions of the social structure of belief in a given community, exclusion or denial of rights is also a sign that the person is not recognised as a full and equal member of the community. The person's sense of individual autonomy is weakened or even undermined because its ability to form moral judgements is restricted.

The third and final recognition principle is 'self-esteem'. It highlights a person's or group's sense of what makes someone special, unique, and (in Hegel's terms) 'particular'. Self-esteem highlights those distinct features or personality traits that are socially significant and valued. It is always oriented at a social setting or context in which the values are communicated and assessed. The social setting provides a framework that serves as a reference for the appraisal of particular personality features, and where the social 'worth' of such is measured in relation to societal goals and to the personality features' contribution to their realisation.[6]
Denial of recognition is under this principle associated with the denigration and insult that emanate from experiences in which one's own form of behaviour and manner of belief are regarded as inferior or even deficient. Those affected suffer a loss in self-esteem, as they recognise that their mode of life is not considered to offer anything of positive value to the community.

There is a tension in the third recognition principle between one notion of self-esteem that is ultimately settled through legal equality and another that seeks measures to ensure communal protection and preservation. The latter 'cultural' type prompts Honneth to ask whether it might make up a fourth recognition principle.

Preliminary European application and evaluation

What implications might we draw from this for the study of the EU's social constituency? As noted above, this framework is not confined to the new social movements, although they of course matter, as is for instance the case with the women's movement in Europe.[7] But *confining* the framework to new social movements could mean failing to capture the nature and extent of the politically salient human suffering that is relevant to the politics of recognition. In the post-socialist era, it has become more difficult to reach

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[6] 'Unlike the sphere of rights, solidarity carries with it a 'communitarian' moment of particularity: which particular values are endorsed by a community is a contingent matter, the result of social and cultural struggles that lack the universality that is distinctive of legal relations' (Anderson in Honneth 1995a: xvii).
[7] On the role of women in the EU, see for instance Hoskyns (1996); Ackers (1999); Shaw (2000); Williams (2003).

agreement on what are the core social ills and injustices (as the debate between Fraser and Honneth over redistribution versus recognition brings out very clearly). Honneth consequently underlines the need to be on the constant lookout for social ills.

> A critical social theory that supports only normative goals that are already publicly articulated by social movements risks precipitously affirming the prevailing level of political-conflict in a given society: only experiences of suffering that have already crossed the threshold of mass media attention are confirmed as morally relevant, and we are unable to advocatorially thematize and make claims about socially unjust states of affairs that have so far been deprived of public attention.
>
> (Honneth 2003: 115–6)

This observation is relevant to the mapping of the EU's social constituency. We must develop a framework that can adequately caption the most important types of injustice. In other words, we must avoid falling into the trap that Offe spells out, namely that each society has a '"hegemonic" configuration of issues that seem to deserve priority and in respect to which political success or progress is primarily measured, while others are marginal or "outside" of politics' (1987: 66).

Second, the recognition framework does not approach the question of the EU's social constituency exclusively 'from below', i.e., from the structure of citizens' demands and social movement involvement in the EU. Rather, it highlights how citizens' demands are shaped by the structure of expecta-tions that the society or community creates. The law and in particular rights are of central importance to the framing of such expectations. The recogni-tion relation could thus be seen to have a 'triadic character': it involves the relation between individuals (and groups/collectives), i.e., the expectations that they place on each other, and that these relations are steeped within a set of institutions that make up the framework of expectations.

Third, we need a framework that is open-ended also because the process of European integration could generate new injustices, foster new actors, and create new and different conflict configurations.[8] European integration need not replicate nation-building. European integration can provide a new arena for claims, such as for instance for the recognition of Europe's Christian

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[8] A prominent finding is that European integration fosters Europeanisation of domestic politics over transnationalisation of politics (Imig and Tarrow 2001: 48).

identity,[9] and for the recognition of national language minorities (Trenz 2004). But it can also make dominant national frames more visible and reflexive, as nationals in one state have to relate to the concerns of non-nationals within and without their state.[10]

Fourth, the Honneth framework does not confine recognition struggles to the realm of culture, but is meant to include issues of distributional injustice.[11] This is however a problematic assertion (cf. Fraser 1997, 2003; Fraser and Honneth 2003). The issue is not *whether* recognition and redistribution are imbricated, as both Fraser and Honneth agree that they are, but rather whether we can rely on one intellectual framework steeped in recognition, or whether we need two frameworks, one steeped in recognition and the other in redistribution. The critical issue is what is lost in relying on one framework. Fraser argues that reliance on recognition alone poses two core problems: that of *displacement* and that of *reification*. With displacement is meant that cultural conflicts can overshadow, marginalise and replace redistribution struggles. The second problem, that of reification speaks to how groups involved in a recognition struggle retain and defend entrenched identities and ways of life rather than relate to, adapt to and reflect on those of its adversaries. Reification relates foremost to Honneth's third recognition mode, that of self-esteem. When reification occurs, reflexivity, learning, and transformation are inhibited.

These are important objections. In a sense, the first problem, when related to the EU, might be the opposite of displacement, a *reverse displacement*, so to speak, as those who see the EU as a functional-type organisation do not consider questions of recognition to be very relevant to the EU. Therefore, it seems important first to establish that the EU is a relevant site for recognition politics, and *thereafter* consider the role of displacement. This article is only concerned with establishing whether recognition politics is relevant to the EU.

The problem of reification is of direct relevance to the EU setting, with one possible case being national identity. If we consider the recognition order

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[9] Consider in particular the struggle for having a reference to Europe's Christian heritage inserted into the Draft Treaty establishing a Constitution for Europe (European Convention 2003).

[10] Consider in this connection Weiler's (2001, 2002) notion of constitutional tolerance.

[11] Honneth's strong thesis is that 'even distributional injustices must be understood as the institutional expression of social disrespect – or, better said, of unjustified relations of recognition.' (Honneth 2003: 114). Fraser argues that this may serve to displace issues of redistribution. (Fraser 2003; Fraser and Honneth 2003).

associated with the nation-state, we find that it holds both a domestic and an international dimension. The domestic order is based on a complex mixture of self-confidence, self-respect and self-esteem. The *democratic* nation-state, very simply put, reins in and makes group-based notions of self-esteem subject to legal-institutional controls, foremost through the medium of individual rights. But in its relations to other states, it can still largely rely on *national auto-recognition*, which is an assurance that the state can appeal to and be recognised as an entity with a distinct national identity entrenched in the doctrine of national sovereignty and upheld by international law.

What this entails in recognition terms has nevertheless been reined in through developments in international law which have modified the doctrine of national sovereignty through a strengthened commitment to human rights. This development has been particularly pronounced in Europe, through the European Court of Human Rights and increasingly so, also through EU law. These (and other) developments point to the prospect of a *post-national* constellation (cf. Habermas 2000).[12] Such a recognition order – whether of a cosmopolitan or of a state-based kind – would privilege the second mode: self-respect. It is steeped in individual rights, and can render the other two modes reflexive. The relevant mode of allegiance would be different from that of the nation-state, as it would be based on a post-national constitutional patriotism (cf. Habermas 1994, 1996, 2000).

The question then is whether the EU represents a recognition order that is distinctly different from that of the nation-state. To get at this we both need to understand the nature of claims directed at the EU, and the nature of recognition expectations that the EU generates. On the identification of claims, Honneth's recognition framework has been critiqued for being static and perhaps even deterministic in terms of privileging presumed over actual claims, and for being overly concerned with pre-political suffering. In other words, Honneth's socio-psychological framework does not provide adequate mechanisms for *whether* and *how* a sense of grievance is converted into action. The Honneth framework lacks attention to the political-organisational conditions that convert a sense of social injustice into reme-dial action. Hence, it cannot account for which forms of unthema-tised suffering, wrong-doing and injustice that *actually organise* and act. Further, this framework also lacks the means to spell out how the very act of politicization affects the nature of recognition, as

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[12] See also Delanty (1995) on the importance of post–national citizenship.

recognition struggles name, interpret, and make visible histories of discrimination and disrespect, and thus not only motivate an aggrieved person to become politically active or to resist, but are a crucial part of the process of self-realization of mis- and nonrecognition.

(Hobson 2003: 5)

In the following, we present a methodological strategy for mapping the EU's social constituency that seeks to take into account both Honneth's notion of unthematised suffering, and the limitations built into the Honneth recognition order. We do so first by trying to outline the possible range of claims and claimants in a European setting. Thereafter we spell out a methodology for studying the EU, with a view to capture the EU's 'recognition order', i.e., to highlight the range of expectations that people derive from and place on the EU.

Identifying claims and claimants

The EU has emerged within a setting with well-entrenched recognition expectations. It is built on top of nation-states, all of which are democratic, and the majority of which are welfare states. If the EU were to copy the arrangements of its Member States or somehow duplicate them, it would establish a recognition structure that would encourage citizens to have equally high expectations. What kind of recognition expectations the EU shapes will be the subject of the next part. Here we will try to identify the relevant actors: the claims-seekers or the claimants, by drawing on the contentious politics perspective.[13] This perspective has three traits that permit its combining with the recognition framework presented above. First, it permits a focus on identity. Second, it is inclusive and not confined to a specific set of actors such as social movements; and third, it highlights institutional and social *interaction* (Imig and Tarrow 2001: 4). Nevertheless, this framework must also be modified to suit the recognition framework. In light of the concern expressed above pertaining to reification, the frame-work must permit us to distinguish between different modes of recognition, with the core distinction between self-confidence/self-respect on the one hand and self-esteem on the other.

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[13] By contentious politics is meant 'episodic, public, collective interaction among makers of claims and their objects when (a) at least one government is a claimant, an object of claims, or a party to the claims and (b) the claims would, if realized, affect the interests of at least one of the claimants' (McAdam et al. 2001: 5). See also Aminzade et al. (2001).

Recognition theorists emphasise the political salience of characteristics that are for the most part *not* self-chosen, such as gender, race, class, physical handicap, sexual orientation, age and nationality. A mapping of the EU's social constituency should therefore start with mapping these. But each such category is not an exclusive container: many people belong in several ones. To capture this, we can use Tilly's (1978) notion of *catness* because it sees category as a variable component, that is, the categories may be more or less complete and exclusive.

But if we use category as the main criterion for selection, that would exclude all voluntary groups. Further, there is no automatic link between category and action. A category of people that suffers enormous wrong-doing and injustice (as have women and homosexuals for centuries) may go on enduring it, or they may suddenly rise to action. It is therefore imperative to consider the organisational dimension, including conditions that either facilitate or stymie mobilisation and sudden and episodic bursts of action.

Tilly's definition of organisation is largely compatible with the recognition framework. Organisation is defined as 'the extent of common identity and unifying structure among the individuals in the population; as a process, an increase in common identity and/or unifying structure...' (1978: 54). A particular category can give the organisation its identity, such as a women's organisation. The group may be loosely structured, as a network, or it may be a tightly integrated organisation. An organisation is a *catnet*, as it is made up of category(ies) and network(s). 'This notion of organization stresses the group's inclusiveness: how close it comes to absorbing the members' whole lives.' (Tilly 1978: 64) To caption the dynamic character of organising, we can use Tilly's notion of *netness*. Organisation is then the function of:

<div align="center">CATNESS X NETNESS</div>

Catnet, as reflected in 'catness' and 'netness', can be both inclusive and exclusive, depending on the nature and range of categories involved, as well as the nature and density of the networks involved. But however relevant and useful this notion of *catnet* is, it does not determine the particular orientation of a group and the types of demands that a group will set forth. It is not possible to infer from a particular *catnet* or organisation whether it will be foremost concerned with claims relating to self-confidence, self-respect, or self-esteem. In the extension of this, it is also not clear whether its overall orientation will be to the promotion and protection of equal dignity, or to

the promotion and protection of difference/uniqueness.[14] Groups may seek all of these, which mean that it is necessary to clarify the objectives of a given group. In addition, several other steps must be taken if the notion of *catnet* is to be used to map the scope and magnitude of concern with recognition in a given setting. In principle, such an effort involves *to go through all of the following steps of identification*:

a) To clarify the *catness,* we need to know the nature and extent of relevant categories in the entities under study. Such categories, as noted, can be gender, sexuality, ethnicity, race, nation, age, region, religion, province, and class. Public statistics are useful, insofar as they contain information on the relevant categories. A complete mapping has to take into account, on an ongoing basis, changes caused by immigration and emigration, and births and deaths, and is therefore extremely resource-demanding. In principle, this initial mapping says nothing about subjective identification with a category, the relation between and among categories, i.e., whether they converge or diverge, coincide or compete, or the political salience of the category. For that we need additional information. The next step is:

b) To clarify *netness,* to know the nature and extent of networks within which people involve themselves. A network is made up of people with some kind of an interpersonal bond – weak or strong. To map this we need to know the type and the degree of contact, and whether this firms up into an organisation. Modern societies are dynamic, are marked by great mobility and also increasingly by technology that facilitates contact and interaction among large numbers of people, at very different levels of personal contact and intimacy. In the European setting, with the supra and transnational EU institutions imposed on the nation-states, there is great potential for network formation.

Networks are often formed around categories, or the latter are embedded in specific networks. In the next step, we:

c) Assess the *catness* and *netness* of these, in order to get a sense of their organisational status. This includes an assessment of the degree of inclusiveness and exclusiveness of each *catnet*, as well as an assessment of their organisational status, such as the resources they command, as well as how they are structured.

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[14] Some theorists underline this distinction more than do others. Consider for instance Taylor (1994); Young (1990); versus Fraser (1997, 2003); Fraser and Honneth (2003) here.

A further indicator of netness is the group or organisation's mobilising potential, which ranges from action taken by a group *in response to* an outside threat to a group's identity or sense of self (defensive), to action taken to capitalise on opportunities that have arisen (offensive) and to that of preparatory mobilisation, where a group 'pools resources in anticipation of future opportunities and threats' (Tilly 1978: 74). Organisational characteristics pertaining to goal, ideology, structure, technology and 'task environment' clearly matter to the establishment of overall netness in a society. The same applies to the nature of inter-organisational relations and the particular constellation of social costs versus opportunities involved.

As Figure 1 shows, groups and collectives place themselves differently within the two-dimensional catnet grid below:
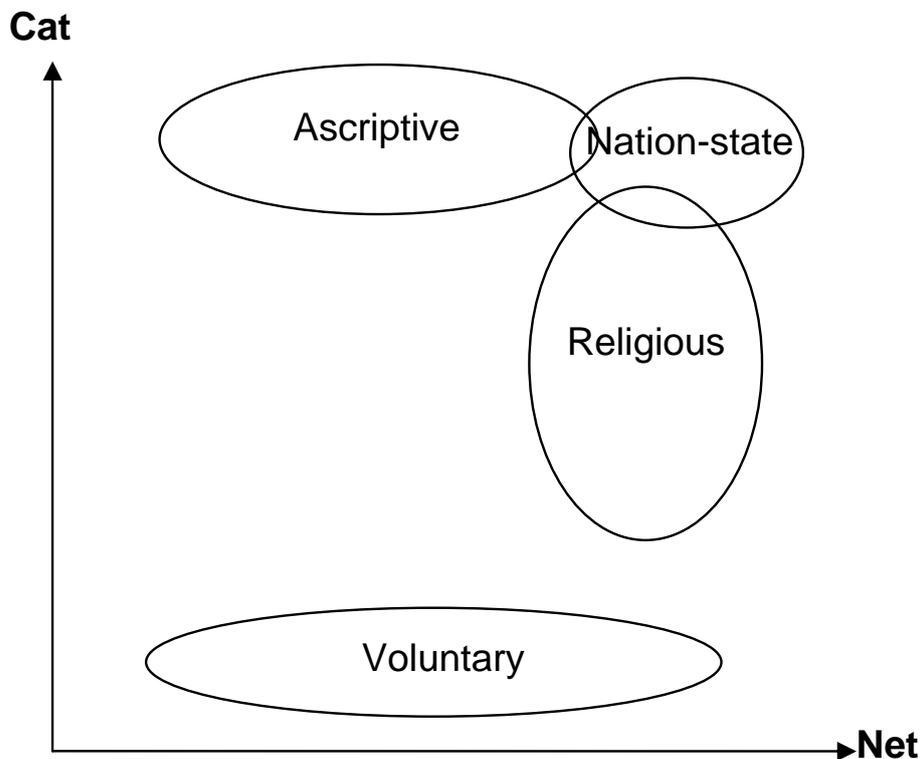
Cat

Ascriptive

Nation-state

Religious

Voluntary

Net

Figure 1. Illustration of the combined *catnet* strength of the nation-state.

d) To sort out *which catnets*, from the whole range of possible ones that would be the most important for us to establish the relevant claimants. This task

requires theory because we need to establish criteria for sorting out the ones that are the most important.

The recognition framework cited above can serve such a theoretical purpose. The question is whether it yields sufficiently clear indicators to select claimants. We can start from any one of the following angles:

- Identify all those groups that are directly involved in the generation, maintenance and also rectification of the basic conditions that ensure self-confidence in any given society.

- Identify the type and range of rights that are available to citizens in a society with the aim of sorting out those groups that are particularly involved in ensuring the conditions that underpin self-respect.

- Identify those groups most closely associated with the 'hegemonic' values in any given society and then look at all those dependent on the 'hegemons' so as to establish the conditions that underpin self-esteem.

- Supplemental investigations, such as for instance to obtain information on the prison population, on the presumption that disadvantaged groups tend to be more frequently incarcerated – are there particular groups that dominate here?

e) To clarify the *reasons* that groups give to seek recognition. One take is to look for the explanations that groups give to account for *why* they are concerned with recognition, and try to ascertain which mode of recognition they are most concerned with. We could interview members of the groups, study the information they produce, the interventions they make, the claims they set forth, and how they are addressed by other groups and by public authorities.

f) To sort groups by explicit reference to the notion of *denial of recognition*. This has the advantage of focusing explicitly on those groups that subjectively see themselves as in need of recognition, and who will also be able and prone to refer to experiences of *denial of recognition* or who refer to some form of *denigration* or *insult*. This strategy is fraught with danger, as its success depends on all those with such experiences *actually using* this particular language. Conversely, widespread public debate on and concern with recognition can have a strong mobilising and educative effect. This could improve a society's collective ability to handle recognition problems. But societies can cement into the reification of group identities. Such societies may also experience negative 'learning' processes, where the authenticity of claims is sacrificed in a

competitive quest for positional advantage: groups may learn from each other what to claim, how to voice their complaints, and how to frame their claims. This can lead to improved ways of expressing grievances, but the expressions need not be authentic in the sense that they can come to reflect the learning of the socially most effective ways of expressing dissatisfaction. In that sense, resourceful groups and individuals can use the language of recognition strategically to promote their interests and concerns.

g) To establish how and the extent to which those actors that can be categorised under the label of recognition approach the EU. Four possible ways in which claims and claimants may relate to the EU can be identified:

  i.   they focus *exclusively* on the EU as the addressee for claims

  ii.   the EU is seen as *supplemental*, meaning that there is an equal focus on the EU and on another entity, such as an organisation's home state

  iii. the EU is a *subsidiary* addressee, meaning that there is another addressee that matters more to the groups or the organisations

  iv.   the relevant claim-seekers *do not focus* on the EU at all

This classification permits us to sort out claims and claimants in terms of degree of focus on and interest in the EU. It is important to establish which mode of recognition predominates under each category, in particular whether those in i) and ii) are concerned with self-confidence/self-respect or with self-esteem.

In line with what researchers have found on the nature of contentious politics in the EU (cf. Imig and Tarrow 2001), this set of indicators should distinguish between organising to participate in EU affairs vs. channel demands to the EU vs. channel demands dealing with EU issues through their respective national bodies.[15]

On the last category (iv), the larger this category of claims and claimants that do not have the EU as their addressee, the weaker the EU's social constituency. But, as noted, even if there are few claims seekers directly addressing the EU, the EU could still figure as an issue within the Member

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[15] Our second and third categories would contain Imig and Tarrow's (2001) collective transnationalism and our third would also cover what they refer to as domestication of conflict 'in which national actors protest at home against policies of the European Union'.

States, which might either put forth claims or be used to *curtail* the role of the EU.

The framework set out above makes clear that to properly establish the nature, scope, and salience of the politics of recognition in the recently enlarged EU requires a very comprehensive research effort. This framework helps us to spell out the specific character of this constituency from a recognition perspective, through our effort to distinguish between different modes of recognition, with self-confidence/self-respect versus self-esteem as the most important distinction. Further, such a comprehensive mapping 'from below' is also useful precisely because it does not take as its point of departure the EU's own definition of its social constituency. How the EU defines its social constituency, i.e. the nature of the expectations that the EU generates, is the theme of the last section. It is the combination of these two sets of investigations, when conducted to the full, that will yield the most complete picture as to the uniqueness of the EU's recognition order.

But first, we will provide a mapping of some of the relevant categories. This effort will also illustrate some of the problems – pertaining to data availability and data collection; research methodology; and research ethics that such an undertaking involves.

Tentative mapping of the EU's social constituency

The first step to take to clarify the scope and magnitude of the EU's social constituency is to identify the nature and extent of relevant categories across the EU's territory. The most recent EU enlargement to Bulgaria and Romania on 1 January 2007 is not included in the following, as these two countries were not EU members at the time of data collection. The mapping thus covers 25 member states. This is already a large number of entities, with great variations as to the availability of descriptive population statistics, as well as with regard to the legal constraints on the collection of such data. As the below parts will show, it is close to impossible to establish exact numbers for the vast amount of minority groups in Europe. This means that the main concern of this first step of the analysis, to ensure an as exact stipulation of groups based on objective categories as possible is extremely hard to come by. It is thus extremely difficult to devise a study that is wholly capable of addressing this problem.

We first present some of the main challenges as regards the collection of data, and then turn to a tentative mapping of four of the most relevant categories:

ethnicity, immigration, religion, and language minority in the pre-2007 25 EU member states.

Such a mapping raises important methodological issues. We will point to some of these here, as we go through examples of how the different countries gather the data. We will show that even the first apparently simple step in the effort to map Europe's social constituency – statistical mapping - is fraught with danger; as it brings up methodological as well as important ethical issues and concerns. As the relevant groups themselves know, the act of placing someone in a given group or category is also to locate the person or group in the given society's status hierarchy. This can also intervene with the very definition of a category of people and enter into the way the data is collected. Further, the socio-cultural salience of a given category may weigh differently in one setting from another, because the relevant categories interact differently. For instance, a particular ethnic identity may in one setting or country be closely linked to wealth and influence, whereas in another with poverty and social estrangement. The number belonging to the ethnic group may be the same in each place but how they are regarded – and regard themselves – in each country, may vary greatly. Fearon (2003: 199) notes that 'what the ethnic groups in a country are depends on what the people in the country think they are at a given time […] it cannot be assumed, without argument, that ethnic distinctions are wholly exogenous to other political, economic, and social variables of interest'. One problem is that this may shape the way ethnic distinctions are coded in a given setting; another is that this greatly limits the scope for 'recognition data' to have the same meaning and significance across different contexts. The implication is that we need to consider the statistical data in relation to the other steps in the analysis before we start comparing across contexts.

It should also be added that historical factors affect both the definition of groups and a given group's propensity to be reported, notably when this registration involves active participation from the group(s) in question. For European Jews, to cite a group whose experiences have been particularly horrific, the availability and efficient use of such registers clearly facilitated the Nazi regime's extermination efforts.[16] Hence, Jews may still be likely to underreport their ethnic status.

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[16] The Nazi bureaucracy registered individuals in 'Jewish Registers' (*Judenkartei*), based on the September 1935 Nuremberg racial laws, local registers and the 1939 census. Systematic registration of Roma and Sinti as well as of disabled (including homosexuals) provided a means to identify and locate victims of compulsory sterilization, incarceration in concentration camps, and for the latter, the so-called euthanasia program. The German effort to accumulate precise

Data (non-)availability

The processing of data on racial origin, religious or philosophical affiliation, health (disability) or sexual orientation is subject to particularly strict conditions in the EU, as the use of such data involves a risk of discrimination (CFR-CDF 2004: 98). The EU Data Protection Directive[17] states that 'Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life' (Article 8 §1). Thus, in some member states the registration of disaggregated sensitive data is prohibited by privacy and personal data protection legislation. In Denmark, such sensitive information may not be processed with reference to The Danish Personal Data Protection Act – which implements the above-mentioned EU directive on the protection of individuals. Danish authorities argue that the necessary requirements of anonymity would lead to considerable uncertainty in the material, and have 'no plans for carrying out a census with a view to gathering information on ethnic groups, religions or languages'.[18] This stands in contrast to the policy of Slovenia, whose Constitution explicitly states that any person has the right to declare his or her ethnic affiliation.[19]

The European Monitoring Centre on Racism and Xenophobia (EUMC) makes on-going efforts to collect descriptive statistics in order to highlight different aspects of racial discrimination in Europe, and recognizes the challenges encountered in the search for data disaggregated by ethnicity or race, as well as religion, in order to identify the different minority groups (see also Alesina et al. 2003). The EUMC calls specifically on 'all Member States to collect, compile and publish yearly such statistics' (EUMC 2003/2004: 193). CompStat is an EU-funded project aimed at overcoming some of these difficulties in the study of integration of immigrants and their descendants in Europe. The project gives a comprehensive account of the availability and

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statistical population data also extended to Czechoslovakia, Poland and the Netherlands (Milton 1997).

[17] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Official Journal of the European Communities, L 281, 23 November 1995.

[18] Sensitive information may only be processed by non-profit organizations relative to their 'members and other persons who by virtue of the object of the organization are in regular contact with this, however, with the proviso that the processing of such information lies within the framework of the organization's activities' (Danish Government 2004: 27-8).

[19] Constitution of the Republic of Slovenia, OJ RS 33/91-I, Article 61.

comparability of relevant datasets – based on registers, counts, censuses or surveys – and has developed a meta-database with full descriptions of micro-datasets (Gächter 2003). However, only eight of the EU-25 countries are covered, and this illustrates the difficulties involved in comparing national data sources in the field of migration and integration.[20]

Another source of information on minority groups is the *Council of Europe Framework Convention for the Protection of National Minorities*. Of the EU-25 countries, 21 have signed and ratified the convention.[21] Signatories of the Convention are committed to reporting on their national minorities, however the reports vary considerably both in scope and accuracy. Some of the reports give estimated numbers for their 'recognized' national minorities, thus excluding immigrants and other minorities that are not granted such status. Again, Denmark provides an example of the problem, reporting only on the one German-speaking minority living close to the German border. No other minority group residing in the country is mentioned. Further-more, in the Italian legal system the concept of 'minority' is linked exclusi-vely to that of language, and the Roma, Sinti and Travellers are referred to as a 'Gypsy linguistic minority' (Italian Government 2004: 37). As a conse-quence, foreign ethnic minorities are not reported to the Framework Convention. The usefulness of the national reports to the Convention in establishing the number of national minorities is thus limited.

One further challenge when collecting data from a vast number of national statistical sources is language constraints. Much of the statistical data from the different national bureaus is only available in national language(s), requiring extensive language skills as well as a certain effort of translation, when collecting the data.[22] The problems related to data comparability due to the 'absence or very limited existence of English translations of legislation and

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[20] The countries are Austria, Belgium, Germany, Hungary, Italy, Netherlands, the Czech Republic, and Poland. The six former countries are surveyed in detail, while the two latter only in outline.

[21] The remaining four countries are Belgium, Greece and Luxembourg (who have signed but not yet ratified the Convention), and France (the only country that has not signed), see the Chart of signature and ratifications. Available at http://conventions.coe.int/Treaty /Commun/ ChercheSig.asp?NT=157&CM=8&DF=2/16/2007&CL=ENG (accessed 16 February 2007).

[22] For example, the main official statistical institution in Belgium, *Institut National de Statistique (INS)* mainly offers information in French, and to a certain extent Dutch, despite German being one of three official language communities. Also the official statistical bureaus in the Netherlands, the Czech Republic, Italy, France and Luxembourg have limited public information in other languages than their national ones, although information may be provided upon request.

other relevant material', are also emphasised by the EUMC (Chahrokh et al. 2004: 4).

Bearing the above constraints in mind, we have attempted to number some of the minority groups in the EU according to four criteria: ethnic, immigrant, religious and linguistic. For each of them, the particular conceptual and methodological challenges encountered are outlined. Data have been collected predominantly from national statistical bureaus. In the first instance, data were gathered from online databases and statistical volumes published by the various national offices, providing population statistics based on censuses, registers and surveys. Complementary information on available disaggregated data was given by officials when such were not accessible online. Further, national reports submitted to the Council of Europe's Framework Convention for the Protection of National Minorities were consulted, where estimates of national minorities are found for several countries, although restricted to a small part of all the groups in question, These data were supplemented by secondary sources, such as the annual country-specific International Religious Freedom Reports published by the US Bureau for Democracy, Human Rights and Labour (on religious minorities), the Euromosaic study (on language minorities) and information from other research projects and intergovernmental organisations.[23]

The purpose of this tentative mapping is to demonstrate the lack of coherent, comprehensive data across EU member states, and that the disaggregated data on the populations that are available must be derived from a variety of sources, concepts and definitions. The presentation is meant to be illustrative, and the main intention is to highlight which data are available, as well as to show the extent to which figures for minority groups actually exist in the various member states. It is not our aim to collect data that can be used for statistical analysis, nor is it to assess which definitions are best suited for the categorisation of various minorities. We rather aim to highlight the issues and concerns that need to be taken into account when attempting to map the current minorities in the EU – as seen from a recognition perspective.[24]

Ethnic minorities in the EU

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[23] See e.g. Compstat, the European Monitoring Centre on Racism and Xenophobia (EUMC) (as of 1 March 2007 the EU Agency for Fundamental Rights, FRA), the International Centre for Migration Policy Development (ICMPD), EUREL.
[24] We wish to thank Lars Tore Rydland at the Norwegian Social Science Data Services (NSD) for constructive comments on this part of the chapter.

When identifying the first category – ethnic minorities – we encounter the most challenging conceptual problems. 'Ethnic identity' refers to membership of a particular cultural group, defined by shared cultural practices, language and custom. The UN Recommendation for 2000 censuses of population gives the following definition:

> Ethnic groups (and/or national groups) are made up of persons who consider themselves as having a same origin and/or culture, which may appear in linguistic and/or religious and/or other characteristics which differ from those of the rest of the population. It depends on the historical and political circumstances whether countries consider such groups as ethnic groups and/or national groups.[25]

This category includes both citizens (nationals) and non-citizens (non-nationals) of the EU member states who consider themselves as having identifiable group characteristics (such as language, culture and religion). From a data collection perspective, problems arise when member states define ethnicity differently, and when there are severe restrictions on the data collection in several countries.

The very concept of 'ethnicity' is highly controversial, and represents as such a further obstacle when trying to identify the groups of different ethnic origin in Europe. Some member states do not use concepts such as 'national minority', 'race' or 'ethnic origin' in legal terms, and more than half of the member states have no official registers of ethnic minority populations.[26] Only ten of the 25 member states collect census data on 'ethnic origin', and with the exception of the UK, they are all among the new member states in Central and Eastern Europe.[27] Most of the censuses asked the respondents to write a nationality or national identity of his/her choice, hence the data is not based on 'category' but on self-identification.

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[25] United Nations Economic Commission for Europe and the Statistical Office of the European Communities), Statistical Standards and Studies No. 49, *Recommendations for the 2000 Censuses of Population and Housing in the ECE Region*, UN, New York and Geneva, 1998, p. 21. Available at http://www.unece.org/stats/documents/statistical_standards_&_studies/49.e.pdf (accessed 16 February 2007).
[26] Austria, Belgium, Denmark, Finland, Germany, Greece, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain and Sweden.
[27] The member states that collect data on ethnic origin are: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia, the Slovak Republic and the United Kingdom.

This is of course understandable for numerous reasons, but from a statistical mapping perspective, it raises several methodological problems. It is frequently observed that the true ethnic group is not recorded or stated by the respondent. People might be reluctant to report his/her belonging to an ethnic minority group, which will result in underreported figures.

The complex character of this issue is illustrated by the Czech 2001 census. The number of people reporting 'other than Czech' identity decreased considerably for several groups from the 1991 census to the 2001 census.[28] Moravian national identity, for example, was reported by 13.2 per cent of the covered population in the 1991 census and only by 3.6 per cent in the 2001 census. The discrepancy between census results and the real size of a minority group was also very obvious in the case of the Roma community. According to 'informed estimates, there are about 200,000 Roma in the Czech Republic'. However, only 11,746 reported Roma national identity in their census forms (Czech Government 2004: 46). Among the explanatory factors are societal developments, such as the increasing homogeneity of the population after the split of the Czechoslovak federation, and advancing integration or assimilation of persons belonging to national minorities. However, part of the discrepancy is believed to be caused by mere methodological factors. Claims were put forward before the 2001 census that personal data might be misused, and this negative publicity is believed to have affected the final result (ibid: 44). An additional methodological explanation is held to be the confusion of 'nationality' with 'citizenship', and the fact that it was optional to report on nationality in the census.

The character of the wording used may also affect the result when collecting sensitive personal data. The Hungarian 2001 census aimed at identifying 'traditional' ethnic minorities only. The first question asked was: 'Which of these nationalities do you think you belong to?', and included an 'exhaustive list of nationalities'. Respondents were allowed to give three answers; however, apart from the thirteen officially registered ethnic groups, only one could be named. The subsequent question was: 'which of these nationalities' cultural values and traditions do you feel affinity with?'. The *total* number of people reporting 'other than Hungarian' on the latter question does not differ considerably from the former; however, there are large variations *within* the ethnic groups. For instance, a total of 189,984 (1.9 per cent) regarded

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[28] The percentage decreases for the main groups were Moravian 72.6 per cent, Silesian 74.7 per cent, Slovak 41.6 per cent and Roma 64.4 per cent.

themselves as Gypsy/Roma, but only 129,208 (1.3 per cent) felt affinity with Gypsy (Roma) cultural values and traditions.[29]

Table 1 gives the *estimated* size of ethnic minorities in 25 EU countries. The figures are based on a variety of sources and are not comparable, but serve to illustrate the various conceptions used and the quality of the 'raw data' available. Where disaggregated data exist, figures are reported by national statistical offices. As discussed above these data are of varying quality. In some cases, such as for instance Slovenia, the table lists the 'most reliable' figures stemming from the census, and thus *underreports* the size of ethnic minority groups.[30] For the remaining countries, reports from national governments to the Framework Convention for the Protection of National Minorities have been used to include some groups that are considered to be 'national minorities', a concept that to a certain extent overlap with 'ethnicity'. However, the signatories use different definitions of such groups, with some countries limiting the framework convention to their language minorities, and others reporting only on the Roma community. The table provides rough estimates only, and smaller ethnic minority groups in several countries are excluded as no reliable data were found.

In order to provide a more comprehensive and coherent mapping, we would first of all need to elaborate a definition of 'ethnic minorities' that best serves our purpose, and then adjust the various numbers systematically according to this definition. Due to the contested concept of ethnicity, this first step alone requires careful assessment. Furthermore, due to legal constraints as well as conceptual and practical problems, extensive data are missing and any attempt to construct a list of ethnic groups requires an important research effort, and still run the risk of low consistency and comparability.

Table 1: Ethnic minorities in 25 EU member states

	Definition used for data collection	Absolute numbers	Total population	% of total population	Reference date
AT[1]	National minorities	169,500	8,000,000	2.1	2000

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[29] It is generally difficult to estimate the size of the Roma community in Europe. According to a Slovenian national minority report, an estimated 7,000 to 10,000 Roma live in the country, but only 3,246 persons declared themselves as Roma in the 2002 census (Slovenian Government 2004).

[30] According to estimates from local elections in November 2002, the real numbers of the members of the Italian and Hungarian minorities are 3,388 and 8,328, respectively, while the census figures listed in the table above only count 2,970 and 6,243, respectively.

BE[2]	n.a.				
CY[3]	Ethnic group	119,200	741,000	16.1	1996
CZ[4]	Nationality/ national identity	980,283	10,230,060	9.6	01.03.2001
DE[5]	Ethnic groups	240,000	82,300,000	0.3	21.09.2004
DK[6]	n.a.				
EE[7]	Ethnic nationality	439,833	1,370,052	32.1	31.03.2000
EL[8]	n.a.				
ES[9]	Roma community	650-700,000	44,108,530	1.6	01.01.2005
FI[10]	National minority	67,000	5,219,732	1.3	31.12.2003
FR[11]	Nationality	6,396,740	59,229,090	10.8	01.07.2004
HU[12]	Nationality	345,611 *No answer: 543,317*	10,198,315	3.4 *No answer: 5.3*	01.02.2001
IE[13]	Indigenous minority	23,509	3,917,203	0.6	28.04.2002
IT[14]	National minorities	2,785,533	56,000,000	4.9	2004
LV[15]	Ethnicity	939,941	2,288,923	41.1	16.08.2006
LT[16]	Ethnicity	576,679	3,483,972	16.6	05.04.2001
LU[17]	n.a.				
MT[18]	n.a.				
NL[19]	Allochthonous	3,088,152	16,258,032	19.0	01.01.2004
PL[20]	Nationality	471,475 *Unknown: 774,885*	38,230,080	1.2 *Unknown: 2.0*	2002
PT[21]	n.a.				
SE[22]	National minority	580,000	8,883,590	6.5	31.12.2000
SI[23]	Ethnic affiliation	Declared: 135,619 *Other: 197,054*	1,964,036	Declared: 6.9 *Other: 10.0*	31.03.2002
SK[24]	Nationality	710,099 *Unknown: 54,502*	5,379,455	13.2 *Unknown: 1.0*	26.05.2001
UK[25]	Ethnic group	4,635,296	58,789,194	7.9	29.04.2001

Notes

[1] No official data on ethnic minorities is available. Estimates of the five autochthonous minorities of Austrian citizenship (Croats, Hungarians, Slovenes, Czechs and Slovaks) largely drawn upon information from the respective national minorities' organisations. Also includes the Roma community as reported by the Austrian Government (2000).

[2] No data available. The 2001 census does not include variables such as ethnicity or race. Belgium has not ratified the Framework Convention for the Protection of National Minorities, thus no reports on national minorities are issued by the government.

[3] Numbers are given for the 'ethnic groups' living on the island, as reported by the Cypriot Government (1999). The Turkish-Cypriots represent the largest minority group, around 12 % of the total population (89,200). The 2001 census results are *not* used, as the census was carried out in the government-controlled area only, thus counting only 361 Turkish-Cypriots. Furthermore, it is noted on the census results of other ethnic groups that 'the number of persons recorded […] does not represent the actual figure. Due to the small percentage of persons belonging to these ethnic groups, what is frequently observed in Censuses is that the true ethnic group is not recorded or stated by the respondent' (Republic of Cyprus, *Census of population 2001, Volume I General Demographic Characteristics*, at p. 144).

[4] Czech Statistical Office, Census 2001.

[5] Statistics based on ethnic criteria are not available in Germany. The numbers are estimates of some national minorities (Danes, Sorbs, Frisians, and German Sinti and Roma) reported as 'ethnic groups' to the Framework Convention for the Protection of National Minorities (German Government 2005). The reference date for the total population size is 31.12.2001.

[6] No data available.

[7] Statistical Office of Estonia, Population Census 2000.

[8] No data available.

[9] No official statistics on ethnic origins available. The Spanish minority reports only include estimates of the Roma community (Spanish Government 2006).

[10] No statistical data exist on ethnic minorities. The numbers are estimates from the second national minority report, and include the Sami, Roma, Jewish, Tatar, Russian and Estonian population (Finnish Government 2004). The Swedish-speaking Finns are not considered to be an ethnic minority group by the Finnish government, and are not included in the table.

[11] No data is available on ethnic minorities in France. The table gives the number of the French population born outside France, which to a certain extent might overlap with the concept of 'ethnicity'. INSEE, *Enquêtes annuelles de recensement 2004 et 2005*.

[12] Hungarian Central Statistical Office, Census 2001. Information on ethnicity is collected on a voluntary basis.

[13] No data available. Central Statistics Office Ireland, Census 2002. Only the Traveller community is registered and included in the table.

[14] In the Italian legal system, the concept of 'minority' is linked exclusively to that of language, and data on ethnicity or origin are not available. The above figures are indicative only and based upon studies and publications (Italian Government 1999: 31-4).

[15] Population Registry, Office of the Citizenship and Migration Affairs (Latvian Government 2006: 3).

[16] Statistics Lithuania, Population Census 2001.

[17] No data available.

[18] No data available.

[19] Statistic Netherlands. No data is available on ethnic minorities, the table only includes the so-called '*allochthonous*', referring to persons of immigrant origin (defined by at least one parent born abroad).

[20] Central Statistical Office, Poland, Census 2002. According to a national minority report, the number of persons belonging to national minorities is between 841,200 and 1,286,000 (2-3% of the total population) (Polish Government 2002).

[21] No data available.

[22] It is not allowed to collect data on ethnicity in Sweden. Estimates of the five national minorities that are recognized within the Framework Convention for the Protection of National Minorities are given: Sami, Swedish Finns, Tornedalers, Roma and Jews (Swedish Government 2001).

[23] Statistical Office of the Republic of Slovenia, Census 2002. The category 'other' includes 22,141 undeclared persons (Yugoslavs, Bosnians, regionally declared, and people who preferred to be ethnically undeclared), 48,588 persons who did not wish to reply, and 126,325 unknown (6.4% of the total population).

[24] Statistical Office of the Slovak Republic, Population and Housing Census 2001. The category 'unknown' covers those who did not declare their nationality, and constitutes 7.1% of the non-Slovak population.

[25] Office for National Statistics, UK, Census 2001. The respondents own perception of belonging to an ethnic group and cultural background. A total of 677,117 persons who replied 'mixed' are included in the figure.

Immigrant minorities in the EU

The second category we have sorted out for illustrative purposes, that of immigrant minorities, also turns out to be difficult to assess – both in terms of availability of data and comparability across member states. The conception of 'foreign' varies considerably. Most member states largely rely on *citizenship* in determining 'foreign persons', however, some also have information on the *country of birth*, and/or the *country of origin* in their population statistics.

Immigrants are often defined as the foreign-born population, regardless of acquisition of citizenship, and the notion is often associated with that of ethnic origin. For instance, the definition of immigrants in Slovenia is 'people who had their first residence outside Slovenia and have been living in Slovenia for at least a year'. However, the duration of residence is usually only present in sample surveys, if at all (Gächter 2003: 14). Descendants, understood as children born in an EU member state by immigrant parents, are registered in few member states, as *country of origin*. One of them is the Netherlands, which has a long history of recording parents' place of birth with the notion '*allochthonous*'. In Denmark, three different concepts are used in the Central Personality Register: '*foreign origin*' (immigrants and their descendants, regardless of citizenship), '*immigrants*' (foreign-born population whose parents are foreign citizens or foreign-born) and '*descendants*' (persons born in Denmark but whose parents are not Danish citizens born in Denmark).

The only category that can be found in the population statistics of all member states is *citizenship*. Nevertheless, the value of this data is limited when seeking to map the immigrant minorities in Europe. This is due to discrepancies between the countries as regards laws and procedures for granting citizenship, the extent of mass (labour) migration and/or immigration, and history of former colonies or overseas territories, which for some results in a large presence of colonial/post–colonial immigrants.[31]

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[31] The EUMC makes a distinction between three groups of countries in the former EU-15 on the background of their immigration history as well as their concepts of migrants and minority population. The first group consists of France, the Netherlands, and the UK, which have a history of 'relatively significant immigration from former colonial territories'; the second of Austria, Belgium, Denmark, Germany, Luxembourg, and Sweden have sys-tematically practised the recruitment of migrant workers; and third group includes the six remaining, so-called 'new immigration' countries, who experienced long-time emigration and only recently are subject to significant immigration (Greece, Italy, Portugal and Spain since the late 1980s, Finland and Ireland since the early 1990s) (Chahrokh et al. 2004: vi).

In the Netherlands, for instance, naturalization is fairly 'easy', and among immigrants born in Turkey, more than half are Dutch nationals. Acceptance of dual citizenship is high. This is illustrated by the fact that 10 per cent of the population have more than one citizenship, and 5.8 per cent have Dutch in addition to one or two other nationalities. Most people of Surinamese descent, people from the Antillean Islands and Aruba are also Dutch nationals, and are not counted if only foreign citizenship is recorded. Table 2 clearly illustrates the discrepancy between figures on foreign *citizenship* and foreign *origins*. The Kurd minority in Germany represents another example of the problems related to the concept of citizenship. According to 1998 estimates, there were approximately 500,000 Kurds in the Federal Republic.[32] But German statistics are based on citizenship rather than ethnic identity, and the recorded number of persons with Turkish citizenship gives no possibility to establish the number of Kurds within this group. In the case of Hungary, 'citizenship' includes those with multiple citizenships, without distinguishing them. As a result, these persons are counted *twice*; both as Hungarian and foreign citizens. In Finland, on the other hand, a person with both Finnish and foreign citizenship is recorded as a Finnish national only.

The method for collecting data on citizenship also *varies* across countries. In some instances, such as the Italian 2001 census, citizenship is declared by the respondent. As a consequence, it does *not* necessarily reflect the number of persons actually holding a particular citizenship. Children born in Italy by foreign citizens might have been declared as Italian citizens even though this is not correct according to Italian law. Furthermore, Italy experienced mass labour migration in the late 1950s and 1960s, and many sons of emigrants born abroad have later returned to Italy. This blurs the distinction between country of birth and that of citizenship.[33] More common, however, is to establish the data on citizenship from registers, sometimes linked with immigration border control offices. The CompStat project identifies 37 of the 223 datasets for six selected member states as containing information on immigrants and/or persons with foreign citizenship. Among these, 14 are registers (38 per cent) and 23 are sample surveys (62 per cent). None of them is counts, censuses or panel surveys (Gächter 2003: 17). In an EU of 27

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[32] 'EU: Kurds, Smuggling,' *Migration News*, Vol. 5, No. 2. 02/01/1998. Available at http://migration._ucdavis.edu/mn/more.php?id=1454_0_4_0 (accessed 16 February 2007). The EFMS (*Europäisches forum für migrations-studien*) Migration Report 1995 estimated the number to be between 400,000 and 450,000.

[33] See '*Gli stranieri residenti in famiglia e in convivenza*', 16.6.2004. Available at http://dawinci.istat.it/daWinci/jsp/MD/download/com_stranieri_res.pdf (accessed 16 February 2007).

member states, mainstreaming immigrants statistically is still an unaccomplished task.

Mapping the immigrant minorities on the basis of official statistics and registers also falls short of identifying large groups of stateless persons and persons with unknown citizenship. The Baltic countries have a particular history in this regard. In Latvia, 73 per cent of all foreign nationals are citizens of the former USSR and have never obtained any other nationality. Close to another 19 per cent of the foreign nationals are from the Russian Federation. The country's citizenship laws have been stringent, and relatively few non-Latvians have sought or gained citizenship – even after the relaxing of some requirements in order for the country to become EU member (Kent 2000). The category 'country of birth' can also be a contested concept, as is the case of Estonia. Russia was recorded as the country of birth for persons born before 1945 within the area between the national border of the Republic of Estonia and the temporary control line. Three quarters of the foreign-born population are born in Russia (a total of 190,599 persons). Furthermore, in 2000, as many as 12.4 per cent of the total population were recorded as having un-determined citizenship.[34] The lion's share was Russians holding an 'aliens passport'. Lithuania, on the other hand, has had a less restrictive citizenship policy, as Table 2 clearly indicates. The Law on Citizenship of 1989 made possible, upon request, for any non-Lithuanian, irrespective of the time, purpose and duration of his/her residence in the country, to be granted Lithuanian citizenship. As a consequence, 'a majority of the Lithuanians expressed their wish to become Lithuanian citizens, including over 90 per cent of all the inhabitants who were of different nationality' (Lithuanian Government 2001: 5). Also in Lithuania, however, 30 per cent of the non-Lithuanian citizens are stateless.

The various immigrant groups in 25 EU member states are outlined in Table 2. Due to the variations in the statistical material and the availability of data, the table distinguishes between three categories in order to provide a more complete overview: people with foreign *citizenship*, foreign *country of birth*, and foreign *origin* (normally defined as one or two parents born in a foreign country). OECD (2006) contains comparable figures on long-term international migration flows, but not for all the member states. We have at this stage chosen to use the raw data that is available from the national bureaus.

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[34] The group of 'undetermined' also includes persons who asserted that they had not received the document and did not know their citizenship.

Table 2: Immigrant minorities in 25 EU member states

	Definition used for data collection	Absolute numbers	% of total population	Total population	Reference date
AT[1]	Citizenship	710,926	8.9	8,032,926	15.05.2001
	Country of birth	1,003,399	12.5		
BE[2]	Citizenship	850,077	8.2	10,355,844	01.01.2003
CY[3]	Citizenship	64,810	9.4	689,565	01.10.2001
	Country of birth	60,024	8.7		
CZ[4]	Citizenship	124,608	1.2	10,230,060	01.03.2001
DE[5]	Citizenship	7,341,800	9.8	82,531,700	31.12.2003
DK[6]	Citizenship	271,211	5.0	5,397,640	01.01.2004
	Country of origin	442,036	8.2		
EE[7]	Citizenship	103,960	7.6	1,370,052	31.03.2000
	Country of birth	252,266	18.4		
	Undetermined	*170,349*	*12.4*		
EL[8]	Citizenship	762,191	7.0	10,934,097	18.03.2001
	Country of birth	1,122,894	10.3		
ES[9]	Citizenship	2,664,168	6.2	42,717,064	01.01.2003
	Country of birth	3,302,440	7.7		
FI[10]	Citizenship	107,003	2.0	5,219,732	31.12.2003
	Country of birth	158,867	3.0		
FR[11]	Citizenship	3,258,539	5.6	58,520,000	08.03.1999
	Country of origin	4,306,094	7.4		
HU[12]	Citizenship	110,598	1.1	10,198,315	01.02.2001
IE[13]	Nationality	273,520	7.1	3,858,495	28.04.2002
	Country of birth	400,016	10.4		
IT[14]	Citizenship	1,334,889	2.3	56,995,744	21.10.2001
	Immigrants	1,446,697	2.5		
LV[15]	Foreign nationality	504,000	21.2	2,377,400	2000
	Country of birth	435,000	18.3		
LT[16]	Citizenship	35,094	1.0	3,483,972	06.04.2001
	Country of birth	246,609	7.1		
LU[17]	Aliens	174,200	38.6	451,600	01.01.2004
MT[18]	Permanent foreign residents	11,000	2.8	399,867	2003
NL[19]	Nationality	591,205	3.6	16,258,032	01.01.2004
	Foreign background	1,602,730	9.9		
PL[20]	Citizenship	40,661	0.1	38,230,080	2002
	Unknown	*659,668*	*1.7*		
PT[21]	Citizenship	232,695	2.2	10,356,117	12.03.2001
	Country of birth	651,472	6.3		
SE[22]	Citizenship	484,076	5.4	8,975,670	31.12.2003
	Country of birth	1,077,596	12.0		
	Country of origin	1,393,207	15.5		
SI[23]	Citizenship	44,591	2.2	1,995,718	31.12.2002
	Immigrants	169,605	8.6	1,964,036	31.03.2002
SK[24]	Nationality	710,099	13.2	5,379,455	26.05.2001
UK	Citizenship[25]	2,450,000	4.1	59,623,406	01.01.2000

	Country of birth[26]	4,896,551	8.3	58,789,194	29.04.2001

Notes

Unless otherwise specified, the figures for foreign citizenship include stateless persons, persons with undetermined citizenship and unknown.

[1] Statistik Austria, Census of Population 2001.

[2] Institut National de Statistique, Bruxelles 2003.

[3] Republic of Cyprus, Census of Population 2001.

[4] Czech Statistical Office, Census 2001.

[5] Federal Statistical Office, 2005.

[6] Danmarks Statistik, 2004.

[7] Statistical Office of Estonia, Population Census 2000.

[8] National Statistical Service of Greece, Census 2001.

[9] Spanish Statistical Office, INEbase, 2005.

[10] Statistics Finland, Population Census 2000.

[11] INSEE, Population census 1999.

[12] Hungarian Central Statistical Office, Census 2001. The number includes 17,593 persons carrying multiple citizenship.

[13] Central Statistics Office, Ireland, Census 2002. The number on citizenship includes 48,412 persons who did not state their citizenship as well as 103,476 persons with British citizenship. A total of 49,299 persons carrying Irish in addition to another citizenship are not included. The number on country of birth include 248,515 persons (or 62.1% of the persons born outside Ireland) born in the UK.

[14] Istat, Census 2001.

[15] Central Statistical Bureau of Latvia, Census 2000, Population Statistics Division. See the Press Release of 21 February 2003, 'Country of birth and nationality of the Latvian population according to the 2000 population census'.

[16] Statistics Lithuania, Population Census 2001. A total of 10.351 stateless persons are included in the number of people with foreign citizenship, constituting 30% of the group. In addition to the number indicating foreign country of birth, a total of 42,512 persons did not answer.

[17] Estimations, 1 January 2004, 'Luxembourg in Figures', STATEC, September 2004.

[18] Demographic Review 2003, National Statistics Office, 2004.

[19] Statistics Netherlands, 2005. In addition to the number of foreign citizenship, a total of 110,980 are stateless or have unknown citizenship. The category 'foreign background' denotes all persons of first generation with a foreign background (while the category 'allochthonous', which is reported in Table 1, includes all with a foreign background also of second generation).

[20] Central Statistical Office, Poland, Census 2002. In addition to the number of persons with foreign citizenship, a total of 444,930 (1.2%) carry a second citizenship in addition to Polish. For 62.9% of this group the second citizenship is German.

[21] National Statistical Institute of Portugal (INE), Census 2001.

[22] The Swedish Integration Board, see http://www.integrationsverket.se.

[23] Statistical Office of the Republic of Slovenia. Figures on citizenship from 31.12.2002 while on immigrants from the 2002 census. 'Immigrants' are defined as 'people who had their first residence outside Slovenia and have been living in Slovenia for at least a year'.

[24] Statistical Office of the Slovak Republic, Census 2001. No data on citizenship is available, the number is the same as Table 1, giving the respondents' own declaration in the census.

[25] Council of Europe Demographic Yearbook 2001.

[26] Office for National Statistics, UK, Census 2001.

Religious minorities in the EU

When turning to the mapping of religious minorities in the EU, the member states are again split as regards the availability of such population data.[35] In almost half of the countries, censuses ask citizens to state their religious or philosophical affiliation, while other countries have no official records. In the latter case, numbers can only be estimated very roughly. There are also internal variations in this group, as some member states provide official statistics at an aggregated level, or on the number of congregations present in the country. However, all the above methods may give a misleading account of the size of religious minorities.

Where disaggregated data exist, they are mainly based upon censuses that vary considerably with regard to the formulation of the questions. The population asked may also differ. For instance, the Estonian 2000 census recorded religion only for persons aged 15 or older. Furthermore, the question was voluntary and registered the faith that the person regarded as his/her own. The person did not need to be member of a church or congregation, and whether he/she was baptised was irrelevant.

For our purposes data on self-identification is of course very useful. A person's self-identification matters, and is an important trigger for claims for recognition. However, from a data gathering perspective, if the only source of data is based on persons' self-identifications, we have no 'objective' data based on category to contrast the data on self-identification with. If for instance oppressed groups tend to *underreport* their religious affiliations, our data will not capture the full extent of unthematized oppression.

Some of the problems encountered in the case of self-reporting of ethnic or racial origin as discussed above also come into play when recording data on religious affiliation on the basis of self-identification. People might fear suppression and/or the misuse of data and prefer not to state their minority religion when asked in a census. In the Slovenian 2002 census, for instance, as many as 15.7 per cent of the total population did *not* wish to state their religion,[36] while another 3.5 per cent stated that he/she was a 'believer but belongs to no religion', and 7.1 per cent remains 'unknown'.

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[35] There is a clear distinction between old and new member states: only four of the former EU-15 report such data (Austria, Finland, Ireland and the UK), while eight of ten new members do the same (Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Poland, Slovenia, and Slovakia).

[36] This number increased considerably – it was almost multiplied by four – from the 1991 census, when 4.2 per cent did not wish to state their religion (81,302 persons).

This matter of conviction is clearly a very sensitive issue. This can be illustrated by the Czech 2001 census. According to 'informed estimates', there are about 3,500 Jews living in the Czech Republic, while only 1,515 persons stated that they belonged to the Jewish society in the census (Czech Government 2004). Still, this represented an important increase from the 1991 census, when only 218 persons classified themselves as Jewish. Interestingly, the category was changed from Jewish 'identity' in the 1991 census to be a matter of religious denomination in 2001, and the number of people who stated their affiliation with Judaism multiplied by almost seven.

It is even more challenging to establish the number of people affiliated with minority religions when relying on aggregated data. When no official data is collected at the micro level, the size of the main religious groups may be estimated based on information provided by the religious or philosophical organizations themselves, sometimes with surveys completing the data.[37] The US Bureau of Democracy, Human Rights, and Labor releases annual reports on religious freedom worldwide. The reports outline the religious demography for each country and are the main source of information for several countries in Table 3. All reports draw upon available statistics, as in the case of France, where the numbers are based on survey data, press reports and polls. Another source of information is the EUREL project, which provides 'accurate and up-to-date information on the social and legal status of religion in Europe', but which to this date covers only 16 EU member states.[38]

The problems related to such aggregated data are also manifold. Firstly, it could be in a congregation's own interest to *overestimate* the number of affiliated people. This would be particularly relevant if it receives some form of economic support based on its membership, or simply wishes to appear more significant than it really is.

On the other hand, such data collection might also *underreport* the actual number of adherents to a religion. In Germany an estimated 87,500 persons are members of Jewish congregations, however, the size of the Jewish population is believed to be considerably higher. Since 1990, approximately 100,000 Jews have arrived from the former Soviet Union, and smaller num-

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[37] This has been the main procedure for establishing the numbers for Belgium, Denmark, France, Germany, Greece, Italy, Latvia, Luxembourg, the Netherlands, Spain, and Sweden.
[38] See EUREL at http://eurel.u-strasbg.fr/ (accessed 12 February 2007). Data are provided and checked by a network of correspondents, specialists of law or social sciences.

bers from other countries. The discrepancy between population numbers and the number of congregation members is due to the fact that *people do not necessarily join congregations*. The same discrepancies are found in Latvia, where figures are based upon membership as reported to the Ministry of Justice. The Jewish community, for instance, is estimated to encompass around 6,000 persons, while only 685 persons are reported as formally members.[39] The largest discrepancy is found in Poland, where the formal membership list of the Jewish congregation counts 2,500 persons, while the Jewish community is estimated to include between 20,000 and 30,000 persons.

From the point of view of our scheme it is problematic that the size of categories is established through CATNETS, and not the reverse, which is how we have set up the investigation. Again, if we were to see the full extent of unthematized oppression, we would need to have data on categories, then on organising, so as to see how much of a given category is actually part of a given CATNET.

Furthermore, in several member states only figures for the largest groups are registered, and smaller religious and/or philosophical communities are thus ignored.[40] In Italy, for instance, several groups that are considered to be significant religious communities are left out from the statistics, as no estimates are available (Orthodox churches, small Protestant groups, Japanese Buddhists, the Baha'i Faith and South Asian Hindus). The actual number of persons belonging to religious minorities is thus considerably higher than what is reported in Table 3 below.

Adding to the complexity of mapping the various minorities is the *overlap* between categories. In many EU member states, the largest groups affiliated with minority religions tend to be foreign born. This is the case of Sweden, where the exact number of Muslims, for instance, is difficult to estimate and has increased rapidly in the past several years,[41] and Greece, where the majority of affiliated with minority religions are not Greek citizens.[42] In Italy, where 87 per cent of native-born citizens are nominally Roman Catholics,

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[39] The Central Statistical Bureau of Latvia only keeps figures for registered religious congregations by denomination, listing more than 1,100 congregations in 2003.

[40] This is the case in Luxembourg, Italy, Malta, the Netherlands, and Spain.

[41] US Bureau of Democracy, Human Rights and Labour, *Sweden – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35486.htm (accessed 1 February 2005).

[42] US Bureau of Democracy, Human Rights and Labour, *Greece – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35458.htm (accessed 12 January 2005).

the large group of non-Christian residents has increased in size as a result of continuous immigration. This group mainly consists of Muslims from North Africa, South Asia, Albania, and the Middle East, and numbers an estimated 1 million. Further, 'Buddhists include approximately 40,000 adherents of European origin and 20,000 of Asian origin'.[43] In the Netherlands, more than half of the Muslim community are non-Western, with the largest groups originating from Morocco and Turkey.[44] The lion's share of the per-

Table 3: Religious minorities in 25 EU member states

	Main religion(s) and % affiliated	Affiliated minority religions	% of total population	Other[A]	Reference date[B]
AT[1]	Roman Catholic	993,580	12.4	U: 12.0	15.05.2001
BE[2]	Roman Catholic 80%	645-670,000	6.3-6.5	A: 8.5	2001
CY[3]	Christian Orthodox	33,437	4.8	A: 0.2	01.10.2001
CZ[4]	Roman Catholic	547,308	5.3	U: 59.0 NI: 8.8	01.03.2001
DE[5]	Reformed Protestant 33% Catholic 33.4%	5,310–5,710,000	6.5-7.0	U: 26.6	2004
DK[6]	Evangelical Lutheran 84%	252,000	4.7	U: 5.4 A: 1.5	2002
EE[7]	Lutheran/Orthodox	30,151	2.7	U: 27.9 A: 6.1	31.03.2000
EL[8]	Greek orthodox 97%	1,178,000	10.8		2004
ES[9]	Roman Catholic 87%	2,200,000	5.2		2002
FI[10]	Evangelical Lutheran 84%	117,116	2.2	U: 13.5	31.12.2003
FR[11]	Roman Catholic 62%	6-8,000,000	10-13.5	U: 6.0	2003
HU[12]	Roman Catholic 51.9%	2,321,092	22.8	U: 14.5 N: 10.8	01.02.2001
IE[13]	Roman Catholic 88.4%	235,711	6.0	U: 3.5	28.04.2002
IT[14]	Roman Catholic 83.1%	1,640,000	2.9	A: 14.0	2004
LT[15]	Roman Catholic 79%	213,991	6.1	U: 9.5	06.04.2001
LU[16]	Roman Catholic 90%	12,000	2.7		2004
LV[17]	Lutheran, Orthodox, Roman Catholic 58.1% (total)	93,852	4.1		2003
MT[18]	Roman Catholic 95%		1.0		2004
NL[19]	Roman Catholic 30%	4,550,000	28.0	U: 42,0	2003
PL[20]	Roman Catholic 89.7%	901,542	2.4	NI: 7.9	31.12.2003
PT[21]	Roman Catholic 80%	489,700	4.8	A: 2,9 NI: 12.3	July 2003
SE[22]	Protestant 80%	965,000 –1,018,000	10.7–11.3		2004
SI[23]	Catholic 57.8%	113,091	5.8	U: 3.5 A: 10.2	31.03.2002

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[43] US Bureau of Democracy, Human Rights and Labour, *Italy – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35462.htm (accessed 12 February 2005).

[44] There are some 296,000 Muslims from Morocco and 328,000 from Turkey, constituting 1.8 and 2.0 per cent of the total population, respectively.

				N: 15.7 NI: 7.1	
SK[24]	Roman Catholic 68.9%	813,429	15.1	U: 13.0 A: 3.0	26.05.2001
UK[25]	Anglican 35%	19,057,000	32.3	U/A: 33.0	2000

Notes

[A] The 'other' category distinguishes between unaffiliated (**U**), atheists/agnostics (**A**), persons who have explicitly chosen 'no answer'/'not wish to answer' (**N**) and persons who have provided 'no info' (**NI**).

[B] Date of reference is set to 2004 when no date is specified in the US Religious Freedom Reports 2004.

[1] Statistik Austria, Census 2001.

[2] Survey-based estimates. US Bureau of Democracy, Human Rights and Labour, *Belgium – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35444.htm (accessed 1 February 2005).

[3] Republic of Cyprus, Census of population 2001.

[4] Czech Statistical Office, Census 2001.

[5] Estimates. US Bureau of Democracy, Human Rights and Labour, *Germany – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35456.htm (accessed14 March 2005).

[6] Estimates. US Bureau of Democracy, Human Rights and Labour, *Denmark – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35451.htm (accessed 1 February 2005).

[7] Statistical Office of Estonia, Population Census 2000.

[8] Estimates. US Bureau of Democracy, Human Rights and Labour, *Greece – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35458.htm (accessed 12 January 2005). Members of the several religious minorities are mostly non-citizen residents, thus the total percentage exceeds 100.

[9] Estimates of the largest religious groups only (Protestants, Muslims, Jews and practicing Buddhists). US Bureau of Democracy, Human Rights and Labour, *Spain – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35485.htm (accessed 1 February 2005).

[10] Statistics Finland, 2005.

[11] Estimated figures, based on survey data. US Bureau of Democracy, Human Rights and Labour, *France – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35454.htm (accessed 1 February 2005).

[12] Hungarian Central Statistical Office, Census 2001.

[13] Central Statistics Office, Ireland, Census 2002.

[14] Estimates for the main groups, the percentage of atheists and agnostics is poll based. US Bureau of Democracy, Human Rights and Labour, *Italy – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35462.htm (accessed 12 January 2005).

[15] Statistics Lithuania, Population Census 2001.

[16] Purely indicative figures. US Bureau of Democracy, Human Rights and Labour, *Luxembourg – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35469.htm (accessed 14 January 2005).

[17] Estimates. US Bureau of Democracy, Human Rights and Labour, *Latvia – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35465.htm (accessed 14 January 2005).

[18] Estimates. US Bureau of Democracy, Human Rights and Labour, *Malta – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35472.htm (accessed 14 January 2005).

[19] Statistics Netherlands, 2003. Although there is an important group of Protestants in the country, they amount to only 14% of the population and are thus listed as adherents to a minority religion.

[20] Central Statistical Office, Poland, Census 2002. The number of Roman Catholics corresponds to baptized persons.

[21] Estimates. US Bureau of Democracy, Human Rights and Labour, *Portugal – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35478.htm (accessed 1 February 2005).

[22] Estimates. US Bureau of Democracy, Human Rights and Labour, *Sweden – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35486.htm (accessed 1 February 2005).

[23] Statistical Office of the Republic of Slovenia, Census 2002.

[24] Statistical Office of the Slovak Republic, Census 2001.

[25] The 2001 census included a question on religion, but 'Christian' was used as a category covering all Christian denominations. Thus, no disaggregated data on Anglican, Roman Catholic, Protestant and other sub-categories were recorded (Office for National Statistics, UK, Census 2001). The data here are estimates provided by the National Centre for Social Research, available at the EUREL website, http://eurel.u-strasbg.fr/. Other numbers are reported in the US Bureau of Democracy, Human Rights and Labour, *United Kingdom – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35492.htm (accessed 1 February 2005).

sons belonging to the much smaller Hindu community, counting 99,000 people, is of Surinamese descent (83.3 per cent). Only 1,000 of the Hindus are of Western origin. The same patterns are found in Portugal. The Muslims are 'largely from Portuguese Africa, who are ethnically sub-Saharan African or Asian' while the Hindu community 'largely traces its origins to South Asians who emigrated from Portuguese Africa and the former Portuguese colony of Goa in India'.[45] Many of these minority communities are not organized formally, and numbers are difficult to estimate. The overlap of religious groups with immigrant communities entails that the mapping of this category must also take into account the flux of immigration. Continuous updates would be necessary in order to provide a full picture, and the size of the various groups can be subject to important changes in relatively short time-perspectives.

With the above reservations in mind, Table 3 presents a schematic overview of religious minorities in 25 EU countries.

Language minorities in the EU
Finally, mapping the many different language minorities in the EU is no less of a challenge than mapping the ethnic, immigrant and religious minorities. Also here, there are considerable variations between the member states as regards language policies, the definitions of language and mother tongue, and the availability of disaggregated data.

[45] US Bureau of Democracy, Human Rights and Labour, *Portugal – International Religious Freedom Report 2004*. Available at http://www.state.gov/g/drl/rls/irf/2004/35478.htm (accessed 1 February 2005).

Only nine[46] of the 25 countries in this study collect census data on language. The most common term used is 'mother tongue', while the Austrian 2001 census asked for 'colloquial language' ('*Umgangssprache*'), defined as 'the language spoken at home', and more than one language could be given. However, as with other sensitive data, such self-declaration might not capture in full a group that speaks a minority language, as people might fear the misuse of data or have a desire to integrate. Other countries have official counts of their language minorities, but in many cases such numbers are believed to underreport the actual size of the groups. Three member states are mentioned in particular to illustrate the problems involved.

In Finland, the registration of data on language is based on statutory reports by citizens and authorities. The official numbers are self-declared and based on the principle that each person has only one language of his/her free choice. The result of this is that Statistics Finland reports 1,704 as having Sami as their mother tongue,[47] while, according to the country's national minority report, there are 7,956 Sami speaking (Finnish Government 2004: 20-21). Moreover, the official registers inform that only 122 persons have Tatar as their mother tongue, while the actual number of Tatars is more than seven times as high – 900 persons – according to the above report. The official statistics also give no figures for Romany-speaking people, while there are estimated to be 10,000 Roma in Finland.

In Belgium, the collection of data on language is not legal, and estimates must be based on data from political or educational institutions, identity cards and driver's licences, and the like. The inhabitants of the federal entities Wallonia and Flandern are mainly French- and Flemish-speaking, respectively, and the population size provides information on the size of the two main groups. The bilingual region of Brussels, however, is more complicated, as people can declare different languages as their 'administrative', 'educational' and 'electoral' language. The country's complex federal system allows each person to choose a language community of his/her own choice. However, the respective membership numbers of the three communities (Flemish, French and German) do not reflect the language demography of the country, as any other minority language is excluded. As there are no reliable figures for these groups, Table 3 only reports the size of the German community. We consider both French and Flemish to be majority languages, as they are fairly

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[46] Austria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia, and Slovakia.

[47] Statistics Finland, 'Mother tongue of the population by age 31.12.2003'.

balanced in terms of recognition, legal framework and use, and are main languages in their respective regions.

As for Italy, the language minorities are recognised as national minorities, however, 'no census of the members of minority groups is provided for in the existing national legislation (law No.482/99)' (Italian Government 2004: 5). The available figures have 'a purely indicative value', and are based on a survey 'in the municipalities hosting minority groups with the purpose of identifying the real number of minority language speakers' (ibid.). Other sources are studies and publications, and surveys on the use of Italian language, dialects and foreign languages have been carried out. One survey asked for the respondent's knowledge of minority languages, and the numbers are thus *overestimated* as compared to the people who have minority languages as their mother tongue. Moreover, the survey asked for the 'language usually spoken' with family and friends, respectively. The results show that 44.1 and 48.0 per cent speak 'only' or 'mainly' Italian, 19.1 and 16.0 per cent speak 'only' or 'mostly' dialect, and 32.9 and 32.7 per cent speak both Italian and dialect. Apparently, the use of other languages than Italian is widely diffused.[48] Nevertheless, this does not necessarily lead to claims for recognition.

Again, it is quite clear that this approach does not offer reliable information on the relevant category of people.

The member states follow different language policies, and a majority of them recognizes particular 'national' language minorities. Such minorities rely on the same rights as the main national language(s) in terms of education, public information and the like. The 'co-official' status of a minority language is often regionally based, such as Catalan, Galician and Basque in Spain, and French, German, Friulian and others in Italy. However, accurate data on the size of these groups are missing. Different policies further contribute to creating a complex picture when mapping possible recognition structures in the EU. Members of a recognized minority group in one country might enjoy full rights to use their mother tongue while the same language group might struggle for recognition in another country if the language is not officially recognized.

The EU is concerned with the protection of regional and minority languages and several studies have been conducted to identify the use of such languages

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[48] Istat, *Letture e linguaggio – Indagine multiscopo sulle famiglie – anno 2000*, 18.12.2002. Available at http://www.istat.it/dati/catalogo/20021218_00 (accessed 16 February 2007).

in the member states.[49] However, they are usually confined to the dominant or officially recognized minority languages in the various countries, and are not exhaustive with regard to language minorities. Moreover, the onus is on the present state of the language groups and the legal, institutional and social structures that condition the use of minority languages, and they must rely on the same incomplete sources and data as regards the linguistic demography. The European Bureau for Lesser-Used Languages (EBLUL)[50] represents the regional and minority language communities of the EU. The fourth minority group covered in this study is thus already provided with a channel for promoting their common interest at the EU level.

Table 4 outlines the total members of language minority groups in 25 EU member states.

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[49] See the Euromosaic study. Available at http://www.uoc.edu/euromosaic (accessed 16 February 2007). See also European Commission (1996).
[50] See the organisation's website at http://www.eblul.org.

Table 4: Language minorities in 25 EU member states

	Definition used for data collection	Absolute numbers[A]	% of total population	Total population	Reference date
AT[1]	Colloquial language	O: 119,667	O: 1.5	8,032,926	15.05.2001
		U: 797,479	U: 9.9		
BE[2]	Language community	O: 100,000	1.0	10,263,414	01.01.2003
CY[3]	Best spoken language	56,147	8.1	689,565	01.10.2001
CZ[4]	Mother tongue	522,663	5.1	10,230,060	01.03.2001
DE[5]	National minority	142-157,000	0.2	82,300,000	21.09.2004
DK[6]	n.a.				
EE[7]	Mother tongue	448,235	32.7	1,370,052	31.03.2000
EL[8]	Minority language	750,000	6.9	10,934,097	18.03.2001
ES[9]	Language spoken	O: 14,380,000	O: 36.0	40,000,000	1998
		U: 833,814	U: 2.1		
FI[10]	Mother tongue	O: 289,868	O: 2.4	5,147,349	31.12.2003
		U: 126,521	U: 5.6		
FR[11]	Language spoken	3,792,000	6.5	58,000,000	n.a.
HU[12]	Mother tongue	167,780	1,6	10,198,315	01.02.2001
IE[13]	First/main language	180,000	5.0	3,600,000	1991
IT[14]	Language spoken	5,572,553	9.8	57,000,000	2000
LV[15]	Mother tongue	994,278	41.8	2,377,383	2000
LT[16]	Mother tongue	506,362	14.5	3,483,972	05.04.2001
LU[17]	n.a.				
MT[18]	n.a.				
NL[19]	National minority	400,000	2.5	16,258,032	
PL[20]	Language used most often	563,499	1.5	38,230,080	2002
PT[21]	Minority language	10,000	0.1	10,356,117	12.03.2001
SE[22]	National minority	580,000	6,5	8,883,590	31.12.2000
SI[23]	Mother tongue	240,602	12.3	1,964,036	31.03.2002
SK[24]	Mother tongue	801,182	14.9	5,379,455	26.05.2001
UK[25]	Speaker of language	717,079	1.3	57,000,000	1991

Notes

[A] Where relevant, minority language speakers are divided in two groups: those speaking an officially recognized minority language (**O**) versus non-official/unrecognized ones (**U**).

[1] Statistik Austria, Census 2001. Officially recognized languages (O) are Burgenland-Croatian, Czech, Hungarian, Roman, Slovak, Slovenian and Windisch ('*anerkannten österreichen Volksgruppen*').

[2] Disaggregated data does not exist, and the table only includes the estimated size of the group speaking the officially recognized German language. See 'German in Belgium', Research Centre of Multilingualism, available at http://www.uoc.edu/euromosaic/web/document/alemany/an/i1/i1.html (accessed 16 February 2007). Members of the French and Flemish communities are around 40% and 59%, respectively (http://www.wikipedia.org http://en.wikipedia.org/wiki/Belgium, accessed 16 February 2007).

[3] Republic of Cyprus, Census of population 2001. The Cypriot 2001 census did not collect data on mother tongue but on 'best spoken language'. The census was conducted in the government-controlled area, excluding some 89,200 Turkish Cypriots (Cypriot Government 1999). Only 340 persons are registered as Turkish speakers.

[4] Czech Statistical Office, Census 2001. Respondents were asked to give the language spoken to him/her in childhood by his/her mother or other people who brought him/her up.

[5] No statistics are established on the basis of linguistic criteria. The numbers are estimates of the language minority groups speaking Danish, Sorbian, Frisian and Romany, as reported to the Framework Convention for the Protection of National Minorities (German Government 2005). The reference date for the total population size is 31.12.2001.

[6] No data available. Authorities do not intend to gather data on languages (Danish Government 2004).

[7] Statistical Office of Estonia, Population Census 2000.

[8] Estimates based on data from the Euromosaic study (http://www.uoc.edu/euromosaic/), covering five language minority groups: Albanese/Arvanite (200,000), Bulgarian/Pomak (30,000), Macedonian (200,000), Turkish (120,000) and Walachian (Aromanian/Megleno-Romanian) (200,000). Official census data do not exist, and Greece has not ratified the Framework Convention on National Minorities.

[9] There are eight language groups of considerable size in Spain: Aragonese, Asturian, Basque, Berber, Catalan, Galician, Occitan and Portuguese. However, no statistics are available and estimates of many of the groups are difficult to find. Numbers are from the 'Worldwide language framework', Jacques Leclerc (CIRAL, le Centre international de recherche en aménagement linguistique de l'Université Laval, Quebec). Available at http://www.tlfq.ulaval.ca/axl/europe/espagneetat.htm (accessed 15 February 2007).

[10] Statistics Finland, 2003 (figures provided upon request). The officially recognized Swedish language (O) is spoken by more than two thirds of the population belonging to a minority language group.

[11] No statistics available, purely indicative estimates from the Euromosaic study of seven language groups: Basque (85,300), Breton (320,000), Catalan (92,000), Corsican (25,000), Dutch (20,000), German (1,250,000) and Occitan (2,000,000). See outlines by the Institut de Sociolingüística Catalana, Research Centre of Wales and Research Centre of Multilingualism. Available at http://www.uoc.edu/euromosaic (accessed 16 February 2007)

[12] Hungarian Central Statistical Office, 2004, Census 2001. An additional 5% did not wish to answer. A slightly larger group reported other than Hungarian as the 'language spoken' (170,377, or 1.7%).

[13] In the 1991 Census a total of 1,095,830 persons (32%) reported being Irish speakers. However, according to recent surveys, only about 5% of the population use Irish as their first or main language. See 'Irish in Ireland', Research Centre of Wales. Available at http://www.uoc.edu/euromosaic/web/document/ irlandes/an/i1/i1.html (accessed 15 February 2007).

[14] Disaggregated data on language does not exist. The figures are survey-based and thus purely indicative (Italian Government 1999).

[15] Central Statistical Bureau of Latvia, Census 2000.

[16] Statistics Lithuania, Census 2001. In addition to the persons who reported any other mother tongue than Lithuanian, as many as 121,830 persons (3.5%) did not answer.

[17] STATEC does not provide statistics on language. The national language Luxembourgian (Letzeburgesh) is spoken by some 350,000 persons (75.2%). French and German are also official languages. See 'Letzeburgesh in Luxembourg', Research Centre of Multilingualism. Available at http://www.uoc.es/euromosaic/web/document/luxemburgues/an/i1/i1.html (accessed 15 February 2007).

[18] No data available.

[19] Statistics Netherlands do not provide statistics on language. The number is an estimate of the Frisian-speaking group, see 'Frisian ("Frysk") in the Netherlands', Research Centre of Multilingualism, at http://www.uoc.edu/euromosaic/web/document/friso/an/i1/i1.html (accessed 15 February 2007).

[20] Central Statistical Office, Poland, Census 2002. According to the national minority report submitted in July 2002, the real number lies between 830,000 and 1,276,000 (2.1–3.3%) (Polish Government 2002).

[21] No statistics available. The number is an estimate of the group of the Romance language Mirandese, see 'Mirandese in Portugal', Institut de Sociolingüística Catalana. Available at http://www.uoc.es/euromosaic/web/ document/mirandes/an/i1/i1.html (accessed 15 February 2007).

[22] Data on language is not collected in Sweden, as it is considered sensitive information connected to a person's ethnicity. The figure is an estimate of the five national minorities recognized by Sweden within the Framework Convention for the Protection of National Minorities; Sami, Swedish Finns, Tornedalers, Roma and Jews (Swedish Government 2001).

[23] Statistical Office of the Republic of Slovenia, Census 2002.

[24] Statistical Office of the Slovak Republic, Census 2001. It is worth noting that 8.2% of the population that do not have Slovak as their mother tongue did not specify their mother tongue (66,056 persons,

1.2% of the total population). Hungarian was reported as the mother tongue by almost three of four who do not have Slovak as their mother tongue (71.5%).

[25] The census 2001 did not include any question for language, and the UK Office for National Statistics does not provide data for this subject. The above estimate include four language minorities: Cornish (1,000), Gaelic (65,978), Welsh (508,098) and Irish (142,003). The three latter numbers are from the 1991 Census and include persons reporting to be speakers of the languages, not those using it as their first language. See outlines by the Research Centre of Wales. Available at http://www.uoc.es/euromosaic/ web/document/cornic/an/i1/i1.html (accessed 15 February 2007).

Lack of data and further implications

To sum up this far, it is clear that there are important ethical and methodological as well as conceptual and practical problems when seeking to undertake a reliable mapping of the relevant categories. Legal constraints and different procedures for collecting disaggregated data do not permit such a mapping to be complete. We simply do not have fully reliable data on the relevant categories; the first step of the overall mapping is thus incomplete. This will have effects on the entire mapping exercise because we will not have a wholly reliable benchmark of statistical data that the subsequent steps can be assessed in relation to. This in no way renders the remaining steps irrelevant (although we have not had capacity to do this), but it is likely to affect the problem of unthematised oppression and the issue of displacement (addressed above).

Thus far we have shown how we might start the work to undertake a comprehensive 'from below' mapping. We found that this was fraught with problems. How serious is this problem? *If the EU does not* generate recognition expectations then there is no real problem. As a rule-of-thumb let us assume that the greater the recognition expectations generated by the EU, the more serious the data lacunae is.

The EU – Instigator of a new recognition order?

Recognition theorists have not discussed the EU in any systematic manner. Most also take the existing democratic nation-state framework as their point of departure and spend little time on developing *alternative polity frameworks*.[51] These lacunae are amplified by the fact that the EU has not spelled out a clear conception of itself *qua polity*.

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[51] Honneth's recognition framework is largely derived from the democratic constitutional state (but not necessarily the nation-state). It would likely be that of a welfare state, or a state with a social-market economy. Taylor's framework could be akin to a 'community of communities', based on 'deep diversity' (for this term, see Taylor 1993) but Taylor does not spell out the polity requirements. From Iris Young, we may think of a pyramidal-type polity, where groups serve as vital actors. In political-institutional terms, the polity may be based on the principle of subsidiarity, in a society-encompassing and secular form (and quite unlike how the EU applies this principle).

Our assessment should establish whether the EU generates recognition expectations and as part of this should also try to make explicit what kind of 'recognition order' the EU represents. There are three options, at least:

a)   The EU *does not* form an independent recognition order

b)   The EU copies or emulates the recognition order we associate with the democratic nation-state

c)   The EU makes up a distinct recognition order – clearly different from that of the nation-state

With regard to a), the EU *does* establish recognition expectations. As will be further developed below, such pertain to individuals, groups and movements, regions, and Member States. There is, however, considerable opposition to the EU establishing itself as an *independent recognition order*.[52] One important component of the politics of recognition that is unfolding in Europe consists in ideological and (national) identity-based efforts to *curtail* the role and scope of the EU, and to scale it down to a narrow, functional-type organisation. These efforts have not precluded the EU from developing into an independent recognition order, however.

But the EU has only partly emulated the state-based recognition order (b). The EU is not a state but is a complex polity with a mixture of supranational, transnational and intergovernmental traits. It does subscribe to a set of basic principles that cohere with those of the democratic constitutional state,[53] but it nevertheless makes up a distinctive recognition order. One aspect of this consists in the strong presence of states as core actors in identity politics. The EU holds numerous provisions on the need for protection of national identities and emphasises diversity. But the politics of identity that is conveyed through state actors in the EU is not a mere defence of national identity. Consider the case of Germany. The Second World War and the Nazi atrocities had deeply discredited German national identity. In response, Germany embraced an inclusive European identity as a means to restore a measure of self-respect and international recognition as a democratic nation

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[52] TEAM – The European Alliance of EU-critical groups, co-ordinating 47 organisations from 18 countries. Available at http://www.teameurope.info.

[53] Article 6(1) TEU states that 'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States.'

(cf. Lipgens 1982: 60–1),[54] and this has worked.[55] One driving force behind the states' reneging of their sovereignty can be to obtain international recognition. Further, a distinctive trait of the EU is that it reduces the ability of states to pose as uniform actors who present one coherent national position. In the EU, state and societal actors contend for space and recognition, in a setting that is no doubt more permissive of national identity protection than is the case *within* established states, such as the US and – albeit less so – in Canada (where much of the theoretical literature on recognition and identity politics has emanated[56]), but which is also far less permissive of national identity protection than is the *international* setting. The EU setting weakens or undermines national auto-recognition.

To shed further light on this, we will (a) try to clarify what is the core relation to the citizens and the social actors that the EU seeks to establish; (b) assess the extent to which the EU is set up to handle claims; and (c) shed light on the EU's recognition order by looking at the conditions for obtaining EU membership.

The EU and its conception of its social constituency

The recognition framework presented above placed great emphasis on self-respect, and a critical instrument for generating such, is rights. Thus, it is important to establish whether the EU is a mere derivative of the Member States or an independent granter of rights. If the latter, the range of rights granted matters a lot to the nature of the expectations produced.

The EU is an independent granter of rights. What type of recognition relation does it establish through rights? Does it relate to its social constituency as a collection of functional interest organisations, and does it consider its citizens as narrowly-based *economic citizens*? Are the citizens referred to foremost as producers, consumers, users, and customers? Or are they considered in *social and cultural* terms as members of a European value

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[54] The same argument, albeit in obviously different form, can be extended to Italy and other former non-democratic states, such as Portugal and Spain. These states, all of which have had discredited political regimes in the post-war period, seized upon integration as a means of attaining international respectability.

[55] A Eurobarometer survey reveals that Germany had the lowest score among 15 West European countries on questions aimed at tapping national pride. Eurobarometer 42 (1994), 1. Germany also had the highest score on the question 'National pride is dangerous' (13.9 %).

[56] The most prominent ones in Canada are: Taylor (1985, 1986, 1989, 1993); Tully (1995), but see also Kymlicka (1995, 1998); Kymlicka and Norman (2000). In the US the most prominent is Young (1990); but see also Benhabib (2002); Gutmann (2003). In Europe the most prominent one is Honneth (1995a, 2003).

community? Or are they considered as *political* citizens, as holders of a set of common civil and political rights?

If we consider the Charter of Fundamental Rights of the European Union (2000), which as the consolidation of the existing rights of Europeans (as culled from EU law, the constitutional traditions common to the Member States, the European Convention for Human Rights and the European Social Charter) represents the most explicit statement of the rights of European citizens, we find that the set of rights is quite comprehensive in terms of range; it is no less encompassing than other bills of rights (Eriksen et al., 2003). The Charter, in line with EU law, recognises European citizens, not only as economic rights-holders, but also as civil, political, social and cultural rights-holders. In this sense the EU establishes a relation to its citizens through the Charter that is no different from that which any democratic state establishes in relation to its citizens. The Charter holds numerous provisions for ensuring private autonomy, as well as provisions to ensure citizens' *public autonomy*.[57] There are also many provisions in the Charter on social rights that speak to solidarity, and which are suggestive of a commitment to the welfare state (Chapter IV, Articles 27–38).

The very invocation of the terminology of European citizenship, and its institutional manifestation in civil and political rights conveys the impression to European citizens that they live under a set of legal and political institutions that permit them to mutually recognise each other as the self-legislating citizens of a European political order.

A further distinctive trait of the EU's recognition order is that citizenship is separated from national identity. Although the EU has emulated nation-type symbols, it seeks its justification foremost in universal principles (democracy, the rule of law, justice and solidarity). The type of allegiance that the EU seeks to elicit is that of a post-national kind.

To conceptualise the EU's social constituency from a recognition perspective it is not enough to establish which principles the EU subscribes to, the principles also have to be entrenched in institutional form, so as to have binding character, as well as to establish their 'social take' or acceptance. Significant gaps between principles and statements on the one hand, and actual arrangements and practice on the other, can generate significant recognition problems.

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[57] For instance, Articles 39 and 40 provide for voting rights and rights to stand as a candidate in European and municipal elections.

If we take the Charter as our point of departure, does it ensure as legal fact that the EU is a strong rights-based entity? The European Charter was a codification of existing law, and it was solemnly proclaimed at Nice in December 2000, but was not a part of the Nice Treaty. The very invocation of the term Charter was bound to generate expectations. But if its status would remain that of mere political declaration this could be construed as a case of *recognition denied*. Note that the process of forging the Charter did serve to mobilise aspects of Europe's civil society, and a very significant proportion of the NGOs sought a rights-based EU (Kværk 2003: Table 5.6; see also Kværk's chapter in this report). Citizens who were concerned with their rights and saw that governments *refused* to incorporate the Charter into the Treaties could easily construe this as proof of the EU *not* prioritising rights. The core EU institutions declared that they would act as if the Charter were binding, but the EU was barred from incorporating the Charter in the Treaties because of opposition from some of the Member States. From this we can conclude that the EU has sought to establish a recognition order very strongly entrenched in rights, but these rights have been challenged and their role curtailed by opposition from some of the Member States.

How and to what extent is the EU set up to handle claims?

The Charter case suggests that there is a considerable gap between the EU's standards and principles on the one hand and its actual ability to deliver on the other. This is borne out in citizenship terms. In the EU, there are clear institutional and procedural limits on the citizens' ability to consider themselves as self-legislating citizens. First, the provisions for ensuring *public* autonomy in the Charter reflect the *weakly* developed political rights of the EU. A person must be a citizen of a Member State to qualify as a citizen of the Union, where each state's rules of incorporation vary considerably,[58] (although they have still contributed to a degree of Europeanisation of national citizenship norms). At the same time there are also provisions that ensure economic and social rights to third-country nationals who do not hold national citizenship.

Second, in institutional terms, the Union suffers from deficiencies in representation and representativeness, accountability, transparency, and legitimacy, all of which serve to stymie the Union's effectiveness in ensuring self-confidence and self-respect. Just to cite some aspects, consider for instance the pillar structure of the treaties, the still weak role of the European

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[58] For an overview, see for instance Soysal (1994).

Parliament (EP), the closed and secretive manner of the Council's operation, the appointed character of the Commission and the limits on individual access to the European Court of Justice.[59] The EU also, underlines Weiler, lacks a *human rights policy* apparatus that can enhance rights protection (2002: 577; see also Alston 1999). The net upshot is that there is a considerable gap between the commitment to provisions to ensure self-confidence and self-respect, and the legal-institutional apparatus that has been set up to realise these.

Third, the general principle guiding Union action is that the Union's competences are 'governed by the principle of conferral'. This means that 'the Union shall act within the limits of the competences conferred upon it by the Member States to attain the objectives set out in the Treaties, and competences not conferred upon the Union remain with the Member States', a provision clearly aimed at national protection. This has not served as a very strong constraint on the scope of action, however, as new tasks have been almost constantly added so that few, if any, areas remain unaffected by the EU and completely within the remit of the Member States. The precise realm of Union competence is not easy to establish, in the way it is set out in the complex Treaties architecture. If for guidance we look at the Convention's draft, we find that most areas are within the category of complementary competences (European Convention 2003). In other words, there is a strong interweaving of Union and Member State action. At the same time, the Union's fiscal resources are limited and essentially controlled by the Member States, and the EU's redistributive ability is quite limited. The Union is far more of a regulatory agent than that of a redistributive one, although its contributions to the poor regions of Europe through the cohesion funds should not be underestimated, and the Union has consistently shown that it does not pursue a social 'race-to-the-bottom' (Moravcsik 2004).

Fourth, recognition theorists underline the role of access. Access can help to settle claims, and conversely, denial of access or strong biases in access can exacerbate recognition problems, as claimants can come to see lack of access as a denial of recognition. The EU encourages the formation of a European social constituency through support to organisation formation at the European level. It also seeks to ensure them access to the institutions. The two main channels go through (a) the national governments and the

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[59] See Francis Jacobs, 'Necessary changes to the system of judicial remedies', Working Document 20 of Working Group II (Charter) of the European Convention. Available at http://european-convention.eu.int/docs/wd2/3222.pdf (accessed 16 February 2007).

institutions of each Member State to the EU; and (b) the complex of EU institutions and arrangements, such as the Commission, the European Parliament, the Council, the system of Comitology, the European Court of Justice, and the Committee of the Regions. The EU is a complex multi-level system, where Member governments have privileged access to many of the institutions at EU level. Social actors have access to some of the EU institutions, and to their respective governments (national and regional). This adds up to a system of 'multiple arenas, venues, and points of access' (Greenwood, 2003: 29). If we look at how this system is used, Imig and Tarrow conclude that

> our evidence strongly suggests that the largest proportion of contentious political responses to the policies of the European Union takes domestic rather than transnational form. In other words, although Europeans are increasingly troubled by the policy incursions of the EU, they continue to vent their grievances close to home – demanding that their national governments serve as interlocutors on their behalf.
>
> (Imig and Tarrow 2001: 47)

Does this suggest that the EU is after all effectively closed? The general trend over time has been for the EU to heighten transparency and openness.[60] It also has institutions, in particular *strong publics*[61] such as the EP, that foster transparency. The EP serves as an important forum of debate, conducts hearings, sets up committees of inquiry, receives petitions from citizens, and appoints an ombudsman, all to heighten accountability and transparency, and stimulate the development of a European public sphere. The strong publics (such as the EP) also ensure inclusion in a deliberative process where claims are presented, justified and seen in relation to possible and available solutions. Here claims are assessed against each other and the relative merits of each can be tested. According to Honneth (2003) and Benhabib (2002), this is an essential ingredient for the handling of recognition claims, although as noted, the EP's ability to translate claims into actions is more limited than that of any national parliament.

Another widely critiqued instance of lack of access is to the process of treaty-making/change. Up to recently formal treaty changes were conducted by

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[60] The Treaty of Amsterdam established a general principle of openness and citizen access to documents. On the Commission, and its efforts to foster openness and transparency, see Imig and Tarrow (2001: 51–2).

[61] For this term applied to the EU, see Eriksen and Fossum (2002).

elites and experts, in relative insulation from Europeans. In other words, citizens were only very indirectly included in this process and were only called upon to ratify what had already been wrought. In the last four years, however, this process has been opened up dramatically through the two Conventions, on the Charter and on the Constitution. These bodies have been unprecedentedly open and have provided avenues for a wide range of social actors in Europe to express their claims. As such, these processes represent not only channels for social inputs into the EU, but also arenas where the EU's social constituency reflexively comes into existence, and obtains a sense of self. They are also critical venues for constitutional reflexivity.

From the vantage point of democracy, the problem in both Convention cases has been that their deliberations and outputs have not had a direct decisional effect. They have elicited responses from organised and unorganised European society, but after having heard them the governments have gone back and decided among themselves what to do. In a sense this can be construed as a *denial of recognition,* as the governments, not the citizens, decide on the rights that accrue to citizens. Citizens are consulted (directly or indirectly) in the ratification stage, not in their capacity as European citizens, but in their capacity as national citizens.

In sum, when we consider the recognition expectations raised by the EU, for instance through such powerful terms as European citizenship, and contrast these with institutional reality, we find a *recognition gap*, because the provisions and the institutions set up to realise citizenship, are not consistent with the expectations raised by this term. The democratic deficit, as an acknowledgement of a gap between standards and practice, is also a case of a recognition gap. A similar argument applies to the social rights in the Charter, which are accorded a less prominent role than property rights, and whose substance the EU is not equipped to realise (Menéndez, 2003). The EU's weak institutional and fiscal capacity, its dependence on the Member States, raise serious questions as to its ability to ensure self-confidence and self-respect – with deep implications for the actual community of values that Europeans can realistically relate to.

Enlargement – as viewed from a recognition perspective

The EU has developed through several major bouts of enlargement. The conditions for membership yield information on the recognition expectations that the EU generates. Further, the EU's actual handling of the (often lengthy) enlargement process – also affects and shapes such expectations.

With every enlargement an altered social constituency emerges. The recent enlargements to the East and South entails a great increase in the EU's social constituency, as a whole range of new claimants have entered the EU. These citizens, groups, social movements, and states come with expectations and hopes, and with a history of structured expectations of recognition and of recognition denied.[62]

How, then, does the EU frame the recognition relation, in relation to the enlargement process? It has set out very specific conditions for enlargement, and these have emerged and firmed up over time. Those guiding the latest bout of enlargement were set out at the Copenhagen European Council (1993). To qualify as an applicant it must: (a) have a functioning market economy with the capacity to cope with competitive pressures and market forces within the EU; (b) have achieved stability of institutions guaranteeing democracy, the rule of law and human rights; and (c) be able to take on the obligations of EU membership, including adherence to the aims of economic and political union. If we relate these criteria to the recognition framework, we see that they highlight self-confidence and self-respect: membership is conditioned on every state complying with democratic norms, and regarding each person as equal under the law. In addition to these conditions, there is an additional one that dates back to the Treaty of Rome, namely that 'any European state may apply to become a member of the Community.'

Application is voluntary but membership is restricted to European states in the way the EU defines 'European'. In other words, a question of relevance to the recognition relation that the EU establishes to its future membership is whether Europeanness is defined through universal or through Europe-specific, contextual and 'ethical' referents. If the latter is used, it brings up the issue of self-esteem, and that some states are more authentically European than others. Research has shown that the EU, which formally relies on a set of uniform criteria, in its actual justifications for enlargement, does distinguish between European states. The Central and Eastern European countries are referred to as 'us', as an intrinsic part of a shared European destiny, and the EU as having a duty to let them in, whereas Turkey, also recognised as European, is not considered in such kinship or duty terms, but rather as a strategically important partner to Europe (Sjursen 2002: 504). In other words,

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[62] Minister of Foreign Affairs of the Slovak Republic, Eduard Kukan, notes that enlargement represents the 'fullfilment of desires of many generations of Slovak citizens to become equal, rightfull and respected actors on the European scene'. When entering the EU Slovakia is 'no longer just a small country from the heart of Europe' (Zagreb 2003).

Eastern and Central Europeans are considered the same kin and part of a European community of common values, whereas Turkey is not. The decision on whether to admit Turkey is therefore also a decision on Europe as a community and how it conceives of itself, including whether it upholds recognition expectations that are ultimately founded on self-respect and self-confidence, or whether these are confined by religious affiliation.

Differences in framing, which relate to self-esteem based categories such as 'kinship' can generate differences in the applicant countries' actual recognition expectations. Further, since such a framing of the issue diverges from the formal criteria, it also brings up the issue of double standards and hypocrisy.

The EU, in line with its membership requirements, presupposes that applicants become full-fledged members, which is underlined by the need for them to accept the entire *acquis*. Thus, whatever the justifications for including a state, once a member, it has to be treated equally. But this also means that a new Member State has no recourse to special treatment. Nevertheless, several existing Member States *have* obtained exemptions. Further, the EU *has* introduced minority protection conditions that only apply to applicants. Finally, some Member States have also introduced entrance conditionality to Eastern/Central Europeans. Note that these are the same people that were addressed in kinship terms and that were told that Western Europeans had a duty to help them. Here lies a considerable recognition gap.

In sum, the EU has established a set of entrance requirements that the applicants must accept to be included. This might look like an imposition since there is no reciprocity but the requirements are intended to be equal and universally applicable. The conditions are reflective of a recognition order foremost anchored in the notions of self-confidence and self-respect. Still, there are cases of actual practice that deviate from these norms.

Conclusion

In the above, we have sought to demonstrate that to clarify the nature of the EU's social constituency, the notion of recognition is useful, albeit it needs to be supplemented with a framework of analysis that helps to clarify who are the claimants and what are the claims. As our partial mapping showed, the process of clarifying the EU's social constituency was made difficult by important methodological and ethical problems. But even if we had the

relevant data, it is still a daunting task to clarify the EU's social constituency because of the very complex nature of the EU itself.

We have suggested that the EU might make up a new recognition order. This EU-based emerging post-national European recognition order draws foremost on self-confidence and self-respect and promises to elicit a greater degree of reflexivity than is found in the nation-state. It also challenges the national self-esteem based mode of recognition that has so long been taken for granted, in particular in interstate relations.

But this new recognition order still also has its roots in the international system of states, so that states play an unusually significant role in the struggle for recognition within the EU. States are critical in the forging of the EU, as well as in the channelling of demands. But within the EU far more than within the international realm, state-carried demands for recognition (with variable degrees of social imprint) have to vie for space with social movements and individual rights promoters. Through Europeanisation, the state-carried national self-esteem based mode has had to enter the fray of a highly complex and multifaceted European recognition struggle. Rather than entrenching and solidifying national collective identities, the institutional structure associated with the EU increasingly *challenges* national auto-recognition, i.e., the taken-for-grantedness of the national point of view.

Honneth appears to be hinting at this significant state role when he says that there might be a need for a fourth recognition principle, which incorporates collective actors. But what we see in Europe is not so much the emergence of a new collective mode of recognition, but rather how the established and very often taken-for-granted notion of – national – self-esteem based collective modes of recognition are challenged and are compelled to come up with justifications.

This new recognition order is both frail and is facing serious challenges. The EU has committed itself to the standards of democracy and equal citizenship, partly in response to social criticism. At the same time, some of the Member States have consistently sought to curtail the EU through placing constraints on it, so as to bar it from delivering on these commitments. Other states have pushed for the EU to take on commitments. Imposed constraints can themselves generate a dynamic in which social actors experience denial of recognition, precisely because of the EU's commitment to – but curtailed ability to comply with – the most central recognition principles. The EU's own search for institutional – and constitutional – recognition is thus

intimately tied up with the social constituency's conception of the EU. This is a potentially vicious circle. The EU responds to social criticism for inadequate democratic legitimacy, but is barred from or held back by governments concerned with their own identity and interests. How vicious this circle turns out to be, depends on the social 'take' or embrace of the expectations that the EU propounds, and for us to know this a comprehensive mapping along the lines suggested above is needed.

The story and the framework listed above could perhaps best be conceived within the setting of the EU's own struggle for institutional recognition and the entire reconfiguring of the European political landscape that emanates from this.

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CIDEL – Citizenship and Democratic Legitimacy in the EU, was a 3-years (2003-2005) joint research project with ten partners in six European countries. The project was coordinated by ARENA at the University of Oslo, and was funded by the European Commission's Fifth Framework Programme for Research.

The main purpose of CIDEL was to examine the prospects for a citizens' Europe through analysing what kind of order is emerging in Europe. A key question was to examine whether the EU is best understood as a mere problem-solving entity based on economic citizenship; whether it is moving towards a value-based community premised on social and cultural citizenship; or whether it is moving towards a rights-based post-national union, based on a full-fledged political citizenship. These notions of the EU correspond to different underlying conceptions of the public sphere and of civil society, and this report approaches the question of whether the EU is moving beyond a narrow regulatory regime from three complementary angles. The first part focuses on the prospects for a viable European public sphere (or spheres). The second and third parts take stock of the status of the EU as a rights-based post-national Union by examining the nature and character of European civil society. While part two addresses aspects of the EU's strong publics with particular emphasis on the Charter and the Constitutional Convention, the third and final part proposes an analytical framework to map the character of the EU's social constituency.